

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 1, 2024
Rough Draft

KELLY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the twentieth day of the One Hundred Eighth Legislature, Second Session. Our chaplain for today is Senator Halloran. Senator Erdman. Please rise.

ERDMAN: Good morning. Join me in prayer, if you would. Lord, we thank you for this day. We thank you that you have sent spring weather to us early, and we just pray you would be with those that are working out today, that are trying to dig out still in my community, in those communities that had a lot of snow. We thank you for the moisture. We thank you most of all for the opportunity to come here and make laws to help people in the state of Nebraska live better. We thank you for each one in this room and those who are going to be here later today. We pray for the staff up front that keep us on st-- on track and record the things that we do. We pray you give us wisdom. Also give us, Lord, compassion that we'd be able to listen and understand what others are saying, that we may do things that are pleasing to you. We ask all this in Jesus' name. Amen.

KELLY: I recognize Senator Lippincott for the Pledge of Allegiance.

LIPPINCOTT: Please join me for the Pledge of Allegiance to our nation and our flag. 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: Thank you. I call to order the 20th 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, sir.

KELLY: Are there any messages, reports or announcements?

CLERK: There are, Mr. President, notice of committee hearings from the Health and Human Services Committee, as well as the Revenue Committee. Additionally, the Executive Board reports LB908 and LB909 as placed on General File. That's all I have at this time, Mr. President.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 1, 2024
Rough Draft

KELLY: Thank you, Mr. Clerk. Senator Linehan, you're recognized for a message.

LINEHAN: Thank you, Mr. President, and thank-- good morning colleagues. The Revenue Committee today has ten bills on its schedule. So what I want to make sure everybody's aware of, what we're going to do is we're going to dedicate an hour to each hearing. And then if everybody doesn't get to testify, they can stay till the end and we'll restart it. And if there's equal numbers proponents, opponents, we'll split it in half plus a neutral-- plus the neutral. My guess is it's not going to be equal. But that's just a heads-up so we can get to all the bills. So thank you very much.

KELLY: Thank you, Senator Linehan. Mr. Clerk, for the first item on the agenda.

CLERK: Mr. President, first item on the agenda, LB600A, introduced by Senator Lippincott. It's a bill for an act relating to appropriations. Appropriates funds to aid in the carrying out of provisions of LB600, and declares an emergency. The bill was read for the first time on January 30th of this year and placed on General File.

KELLY: Thank you, Mr. Clerk. Senator Lippincott, you're recognized to open.

LIPPINCOTT: Thank you, sir. LB600 amends the Economic Opportunity Program to include infrastructure improvements for cities of first class, second class and villages for redevelopment plans under the Community Development Law. That is all, sir.

KELLY: Thank you, Senator. Seeing no one in the queue, you're recognized to close, and waive closing. Members, the question is the advancement of LB600A to E&R Initial. All those in favor vote aye. All those opposed, vote nay. Record. Mr. Clerk.

CLERK: 35 ayes, 0 nays, Mr. President, on advancement of the bill.

KELLY: LB600A advances to E&R Initial. Mr. Clerk.

CLERK: Mr. President, LB31, introduced by Senator Jacobson. This is a bill for an act relating to railroads. It requires a train crew of at least two individuals as prescribed; provides fines; and provides duties for the Public Service Commission. The bill was read for the first time on January 5th of last year and referred to the Transportation and Telecommunications Committee. When the Legislature

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 1, 2024
Rough Draft

left the bill yesterday, adopted had been the committee amendment, pending was both the underlying bill as well as a floor amendment from Senator Slama.

KELLY: Senator Jacobson you're recommended, or you're recognized for a one minute refresh.

JACOBSON: Thank you, Mr. President. Well, those who are listening at home, grab a cup of coffee, settle in. We're not going to do anything today, but rehash what we talked about yesterday. So, I just want to make sure everybody knows there won't be anything new, especially, happening. What we're going to do is we're going to hear a lot of the same arguments we heard yesterday, because we're in a full blown filibuster at this point. And so we will go at the eight hours and then ultimately get to a cloture vote. So what you'll find is going to happen is we're going to debate the floor amendment that's out there today. And then, if there's a call of the house, that will be potentially passed and then another floor amendment will be filed, and we'll continue to talk about meaningless floor amendments just to move the time along. But hopefully during this process, there will be a few new things come up in terms of, of arguments on one side or the other. I think that really this is part of the process of how the Legislature works. I think everyone understands that. So thank you, Mr. President.

KELLY: Thank you, Senator Jacobson. Senator Slama, you're recognized for a one minute refresh on your floor amendment.

SLAMA: Thank you, Mr. President. I, I will be brief. As Senator Erdman brought up yesterday, Phil is here. It's not [INAUDIBLE], it's filibuster. I wasn't planning to. Then the question got called, so here we are with the floor amendment. Senator Jacobson was accurate with how today will proceed. It's either this or talking about daylight standard time, which I really don't want to. Thank you, Mr. President.

KELLY: Thank you, Senator Slama. Turning to the queue, Senator von Gillern, you're recognized to speak.

von GILLERN: Thank you, Mr. President. I was actually in the queue yesterday when we had a little bit of a disruption with a call of the question after an hour. And actually I redid the math, It was about 90 minutes worth of debate on this bill. And as I mentioned yesterday, and I want to remind us today, that apparently is the new standard for full and fair debate as we go forward. If we don't like a bill, we

just call the question and we go forward from there. So, it's good to know, as we move forward on complicated bills that maybe we like, maybe we don't like. So, this is one, actually, and I have great respect for my friend Senator Jacobson for bringing this. And I understand his motivation clearly about increasing safety for railroad workers and others who encounter railroad workers, such as people on the highways and in, in the communities that the railroad lines travel through. And, and as I, just a quick reminder, as I mentioned in my testimony yesterday, when I, when I owned and operated my construction company, we had a very, very strong culture of safety there, and we invested a lot in that. And so I'm passionate about that as a, as a, actually as a moral issue. There are, there are financial benefits too, to having a safety culture. But the moral benefit, obviously, our safety mantra was everybody goes home in one piece at night. And, and all those folks have families, and we wanted to make sure that everyone went home safe and healthy and could be with their families in the way that God intended them to be. So again, I did actually have some cogent questions for Senator Jacobson. And I would ask if he would yield to a couple of questions.

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

JACOBSON: Absolutely.

von GILLERN: Senator Jacobson, you pointed out in several occasions where there are instances where in a, in an accident scenario where someone was not allowed to leave the train, I don't know if it was the conductor, the engineer, the driver, what the proper term is. And that sounds like a policy decision. It said that I think there were-- and there was an instance you talked about where they were unable to to render aid to someone who truly needed aid. Is that a policy matter that could be changed, that could improve safety in the case of an incident? Or is that-- is there, is there more context to that that I need to understand?

JACOBSON: Well, let me just say that I'm not sure I referenced any kind of situation where that was a problem. I think Senator Dorn had referenced a situation where they were not able to leave the train. The policy that's out there, and this is a federal policy, as I understand it, is the engineer cannot leave the cabin, they must stay in the cabin. Let me put this in context. The cabin is a sterile environment. No cell phones. OK? There is a restroom which the crew member can use if they stop the train to use it. There are buttons inside there that they have to push. Actually, if they don't move the

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate February 1, 2024

Rough Draft

brake or move the throttle for 45 seconds, there will alarm will go off in case they've lost their focus. And if it-- and if they don't push the button within 45 seconds to train will automatically stop. OK. So the engineer must stay in that cabin. So if there is a collision at an intersection, OK, or there's a need for an acc- or other problem, there's a whole list of items that can happen to the train where the conductor needs to go, get off and fix it. The conductor can leave the cabin, but the engineer is not allowed to leave the cabin at any time. So if there is a head on-- if there's a collision at an interchange or an intersection, the conductor can leave to check out the situation. The engineer is not allowed to leave the cabin. So if you have one crew member, the engineer's looking down at the people that are in distress, if they haven't been killed in the collision, and could do nothing about it. So that's, that's the context and that's the regulations that are out there today. And that's what that second crew member--

KELLY: One minute.

JACOBSON: --is there to do.

von GILLERN: Thank you, Senator Jacobson. Forgive me for confusing the two different testimonies. And thank you, Senator, for-- Senator Dorn, for adding clarity to that. So is that a policy matter between the railroad that's been negotiated as part of a collective bargaining agreement, or is that an OSHA or a federal safety regulation, or is it a simply a policy of the railroad that says that they can't do that, does, does anyone know the, the answer to that?

JACOBSON: My understanding of that is that this is a federal regulation and, and that there are times when that might be-- the crew member may be asked by their employer to do something different. But my understanding is that that is a federal regulation.

von GILLERN: OK. Thank you, Senator Jacobson. Thank you, Mr. President.

KELLY: Thank you, Senator Ron Gillern and Senator Jacobson. Senator Moser would like to recognize the physician of the day, Doctor Dan Rosenquist of Columbus. Please stand and be recognized by your Nebraska Legislature. Senator Linehan, you're recognized to speak.

LINEHAN: Good morning again, Mr. President, and good morning, colleagues. So, it is a filibuster. That's right. Full blown. I-- I'm

going to go repeat much of what I said yesterday. Stay on the subject. We're interfering here in companies that are nationwide, that are regulated by the federal government because of interstate commerce. We're also-- I think maybe people don't understand how the salaries and the benefits of the employees at Union Pacific. Union Pacific, as I said yesterday, employs 6,000 Nebraskans. I think their average salary is north-- well, I know average salary and benefits is north of \$100,000, and that includes the people in the train. So it's not as if we're talking about an under-organized union, or people who are being mistreated. I, I also know that Union Pacific, it is a corporation, and many times different people say that like it's a bad word. But we need to remember corporations are made up of shareholders, and shareholders are taxpayers, and Union Pacific, I believe, has many, many shareholders in the state of Nebraska. I will admit I am one. I have been since my mother-in-law passed away, and she held onto that Union Pacific stock like my family held onto farms, because her father came to Nebraska. He was Irish, Sullivan. He came to Nebraska to work on the railroads. And as part of his employment and his benefit and pay, he acquired stock. And it was literally kind of the joke of the family that my mother-in-law, Mrs. Linehan, for-- she-- they could spend everything else, but nobody was to touch the Union Pacific stock. And it still is the family today. That is not something that you can disperse of, just like the Lovitt family can't disperse of farms. So it's rich history here, and it's willingness to stay here as one of our largest employers, one of our largest income taxpayers, the largest property taxpayer in the state. And we think we need to interject our knowledge into this argument. I don't think so. I said in a hearing with the Revenue Committee yesterday, or I think we got out of here at 7:00, and we hear it all day, how we shouldn't interject ourselves into local control. So I get up this morning and I thought, oh. We're not supposed to worry about anything below legislative level, even though our property taxes have gone up \$1.3 billion since I've been in the Legislature. We're not supposed to worry about that or interject ourselves into that. But we're interjecting ourselves into a private industry which benefits everyone that works there. Thank you, Mr. President.

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

SLAMA: Thank you, Mr. President. And good morning, colleagues. So just a brief summary before I dive in here. We're not here today with a filibuster because of anything against Senator Jacobson. He's wonderful. We have a great banter. We're kind of like the old odd

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 1, 2024
Rough Draft

couple of the Banking, Commerce and Insurance Committee. I put up with him, he puts up with me. It's great. I've been opposed to two-man crew since I've been in the Legislature. I view it as an unconstitutional state regulation of interstate commerce. And we'll talk about that more later. But like Senator von Gillern said, we had the question called after just over an hour on what is actually one of the few substantive debates we've had this session. So, in terms of fresh material, I will get fresh here. Anytime one of these filibusters gets brought by Republicans, and I'm just going to tail this off, before somebody brings it up. We're always accused of bringing in the invisible hand of partisanship. So let's get real honest about that for a second. So when a Republican brings this, it's implied that the Nebraska Republican Party is somehow behind the filibuster. To be clear, the Nebraska Republican Party right now is broke, wonders why they're broke, and then pulls stunts like alienate people like me, who, young, conservative, Republican woman, the exact people the Republican Party has problems with, who gets national awards for being conservative from the American Conservative Union, National Young Republicans, whatever. Not based on policy. I think we all know why, but we won't say it. Or if you don't like the example of me, take this weekend, for example, as to why they wonder why they can't fundraise when the SCC not only doesn't endorse Congressman Adrian Smith, who has a 20 year record of being one of the most conservative members of Congress, they not only did not endorse him for the primary, they endorsed his opponent instead because, get this, he didn't fill out a questionnaire asking basically, what's your favorite color? So in spite of all that, we still point to the Republican Party being the invisible hand of partisanship in the Legislature. And in addition, somehow we still have this many Republicans in office because the Nebraska Democratic Party is even more incompetent. Like Senator Mike McDonnell is one of the most electable Democrats in the state, and at every turn they're censuring him for something new. Like he's, he's the one that could run for statewide office and win. So let's not pretend like the state parties are at all operational, or have any sort of undue influence on this Legislature, or reflect the view of an overwhelming majority of Nebraskans. Like, the more I see with headlines of the state party operations, whether they be Republicans or Democrats, I'm reminded of my favorite Stealers Wheel song, which is clowns to the left of me, jokers to the right. Stuck in the middle with you. And with that on my next turn on the mic, I will hop into the unconstitutionality of the state level regulation of a two-man crew. But I just wanted to bring something fresh into the discussion. Thank you, Mr. President.

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

KAUTH: Thank you, Mr. President. And I am going to have that song stuck in my head all day long. Thank you, Senator Slama. So, back to two-man crew. I want to talk a little bit about preemption. Preemption basically states that if the federal government overrides it, our state law isn't going to matter. The FRSA, which is the Federal Railroad Safety Association, it's designed to promote safety in every area of railroad operations, and authorizes the Secretary of Transportation to prescribe regulations and issue orders for every area of railroad safety. They have an entire division designed specifically around railroad safety. The act contains an express preemption provision, which states that laws, regulations, and orders related to railroad safety and law, regulations and orders re-- related to railroad security shall be nationally uniform to the extent practicable. It goes on to provide that a state may adopt or continue to enforce a law, regulation, or order related to railroad safety until the Secretary of Transportation prescribes a regulation or issues an order covering the subject matter of the state requirement. There is currently at the federal level, they are studying this and they're making this determination, I believe we were told that it would be made in March. The chances that they're not going to rule on this are slim to none, so we'll know in March. In Burlington Northern Santa Fe Railroad v. Doyle, the Seventh Circuit held that the FRSA preempted, in part, a Wisconsin state law requiring two man train crews. The state law in question was very similar to today's proposed legislation. The court found that the Federal Railroad Administration has issued various orders relating to crew size, including in the context of hostling and helper movements. As such, it concluded that the state law was preempted to the extent it required two-man crews in those circumstances. In the years since Doyle, the FRA has engaged in extensive further action on the issue of crew size. These actions include the following. In 2009, the FRA expressly denied a petition from a labor union to require multiple person crews, explaining it has no factual evidence that would justify such a mandate. And again, this is in 2009 as I spoke about yesterday. Our technology has come so far, so fast. It is much, much better now. The FRA has issued extensive regulations governing remote control locomotive operations. These regulations expressly contemplate and permit single person crews in various contexts. In 2013, the FRA issued a safety advisory requiring railroads to review their crew staffing practices for over the road trains that transport certain hazardous materials and amend existing

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 1, 2024
Rough Draft

practices as necessary to ensure safe movement of trains. However, they declined to impose any such requirements for other over-the-road operations. They're paying attention to this. They don't need us interfering. In 2016, the FRA issued a notice of Proposed Rulemaking on the subject of crew size. The FRA proposed requiring two person crews, unless otherwise specifically authorized by the agency. However, they admitted that it cannot provide reliable or conclusive statistical data to suggest whether one person crew operations are generally safer or less safe than multiple crew operations. The agency conducted a public hearing and received extensive comments from a wide range of stakeholders on both sides of the issue. This discussion has been around for a very, very long time.

KELLY: One minute.

KAUTH: Thank you, Mr. President. After more than three years of consideration, the FRA withdrew the crew size NPRM. The agency expressly determined that no regulation of train crew staffing is necessary or appropriate for railroad operations to be conducted safely. So they've been studying it for decades. They've improved their processes. They continuously look at it and double check to make sure that it's safe. Safety has, has gotten much better over the past 40 or 50 years. Us stepping our fingers, or putting our fingers into a what is essentially a labor issue is not appropriate. Thank you, Mr. President.

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

JACOBSON: Thank you, Mr. President. Well, gosh, that gives me a little more material to respond to, I guess, this morning. First let me just say I agree with Senator Slama. We're, we're friends going into this, we'll be friends going out of this. This is part of the process. For those of you listening at home, Senator von Gillern and I are great friends, Senator Kauth and I are good friends. This is the process, OK? This is the process. We represent our constituents and that's what we're here to do. Think of this as attorneys making their case in a legal situation. I'm going to represent my clients. And my clients live in District 42 and an overwhelming number of railroad workers, but I'm also representing people across the state who are concerned about the safety issues. I want to walk through these kind of a little bit, one at a time. I want to first respond to Senator Kauth's issues with regard to what happens, why we need that two person crew. I'm going to say this again. I'll have to keep saying this, I think, along

the way as people raise different issues, I am not suggesting that a two person crew is going to change the number of derailments. Let me be very clear. I do not see the number of derailments going down as a result of having two people, three people, ten people, 50 people. I do, however, contend that that person who is allowed to leave the cabin has the ability, in the event of a derailment, which have gone up in numbers, not down, to save lives. To get off the train, meet with first responders, give them the manifest, let them know what's on the train. There have been far too many close calls. Think about the event in Bailey Yard with a perchloric acid. Think if that train would have left the station, so to speak, no pun intended. And this explosion would have happened going through a small town somewhere. What would have been the event there? Fortunately, no one was killed in the yard. So I look at safety, and I look at the safety record, and it's horrid. The FRA did an inspection, a surprise inspection at Bailey Yard, they had over twice the acceptable number or the normal number of violations that they find on locomotives and train cars, generally dealing with the wheels, which is what causes the derailments. How much property tax and income tax do you have to pay to be able to ignore safety? What is that number? What number do I need to get to as a business to where I no longer have to abide by or be held accountable for any safety issues? What is that number? Because it sounds like that's what it is. If you pay enough in property taxes and income taxes, you don't have to abide by any safety regulations. Yes, federal law will preempt state law, but state law can be more restrictive than federal law. If I drive across Iowa and I drive the normal Nebraska speed limit of 83, they find that you have to lower the speed limit when you get to Iowa. OK? Because their speed limit is lower down the interstate. We have two bills in Banking and Commerce and Insurance Committee that deal with biometrics, companies that do business across the country. And we, along with other states, are probably going to pass regulations and requirements as to how they can operate in our state as it relates to research they do and keeping privacy, biometric data private. It's a patchwork.

KELLY: One minute.

JACOBSON: This isn't a federal law. Thank you. This isn't a federal law. This is a law that we're creating in Nebraska. And it's going to be, and it's going to be-- all of these companies that do this are going to be held accountable this. And interestingly enough, we had a testifier there who represented Microsoft and a whole group of, of other bio-- data companies, tech companies, who was asking for this regulation. One reason they're asking for it is they would like to

have consistency. Right now in Nebraska UP does have a two person crew in place, and it is part of, of collective bargaining. But the Burlington Northern does not. This would put the, the carriers in the state of Nebraska on a, on a par with others. Can we do this? 11 other states have done it. You heard Senator Wayne yesterday read the article in the Seattle Times that a circuit court, appeals court, has ruled that it is constitutional, that they can do it.

KELLY: That's your time Senator.

JACOBSON: Thank you.

KELLY: Thank you, Senator Jacobson. Senator Erdman, you recognized to speak.

ERDMAN: Question.

KELLY: The question's been called. Do I see five hands? I do. The question is, shall debate cease? All those in favor, vote aye; all those opposed, vote nay. There's been a request to place the house under call. There has 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: 11 ayes, 4 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. Record your presence. All unauthorized personnel, please leave the floor. The house is under call. Senator Armendariz, please return to the Chamber and record your presence. The house is under call. Senator Cavanaugh, we are lacking Senator Armendariz, how do you wish to proceed?

M. CAVANAUGH: Pen proceed, thank you.

KELLY: The vote was open. Senator Erdman, would you take call-in votes? The answer is yes. And the question is the floor-- the adoption of floor amendment-- to cease debate. The question is to cease debate. Now accepting call-in votes.

CLERK: Senator Conrad voting yes. Senator Machaela Cavanaugh voting yes. Senator Armendariz voting no. Senator von Gillern voting no. Senator Ballard voting no. Senator Dover voting no. Senator Allbrecht voting no. Senator McDonnell voting yes. Senator Linehan voting no.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate February 1, 2024

Rough Draft

Senator Arch voting no. Senator DeKay voting no. Senator Aguilar voting no. Senator Lowe voting no. Senator Brandt voting yes. Senator Hansen voting no. Senator Lippincott voting no. Senator Meyer voting no. Senator John Cavanaugh voting yes. Senator Ibach voting no. Senator Riepe voting no. Senator Brewer voting yes. Senator Clements voting no.

KELLY: Mr. Clerk.

CLERK: Mr. President, 15 ayes, 22 nays to cease debate.

KELLY: Debate does not cease. Returning to the queue, Senator Moser. And I raise the call.

MOSER: Thank you, Mr. President, and welcome, colleagues. Good morning, Nebraskans watching the debate. Welcome. So we have a contentious issue here that some senators feel very strongly about. And they're pushing this to the cloture limit because they feel that the motion doesn't have enough votes to survive cloture. So that's kind of what's happening. I'm the chairman of the committee that this bill came from, and this bill, or bills similar to it have been offered into this, committee or referred to this committee, over the years, numerous times, and it's never gotten to the floor. The consensus of the committee was in the past that they didn't want this bill advanced to the floor. However, in discussions with members of the committee, I was getting the impression that there were enough senators on the committee that wanted to bring this to the floor and debate it. So even though I voted no on advancing this bill to the floor, six of my colleagues on the committee voted to advance it, and one voted present, not voting. So this kind of puts the chairman in kind of a spot where the chairman is against the bill, but six of his colleagues on the committee are in favor of it. So I'm not going to be jumping up here every half hour to help waste time. I'm just going to kind of sit back and let the process take its course, because, you know, I want to be true to my friends on my committee and work with them and, their wishes, where we had 75% of the committee that felt this was worth debating. And even though I think this is something that should be negotiated between the union and the railroads, they should have a contracted agreement on how to manage their business and how to run their trains. I don't think any business likes being told how to run their business. They know more about it than we do. And so I won't be voting for the bill at any point, or-- and I won't be voting for cloture when that moment comes, and that's why. So thank you and have a good day.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate February 1, 2024

Rough Draft

KELLY: Thank you, Senator Moser. Senator Holdcroft, you're recognized to speak.

HOLDCROFT: Thank you, Mr. President. And I rise in opposition to LB31. I just wanted to follow up on something that Kauth started actually yesterday afternoon about the evolution of technology and how it can, can result in the requirements for, for watch standers. In particular, I wanted to, to talk about this morning, the evolution of steam propulsion in U.S. Navy ships, to gas turbine propulsion. And the result of-- the significant result in the requirements for watch standers, which increased-- with increased efficiency. So, first, though, I wanted to, to reference an article that was in the Lincoln Journal-Star this morning about the naming of a U.S. ship for a Nebraska hero. The Navy is about to name a ship in honor of Omaha's World War Two hero of the Solomons. Navy Secretary Carlos del Toro announced recently that one of the next new Arleigh Burke class destroyers, will be named for Petty Officer First Class Charles Jackson French, who was born in Arkansas in 1919 but was raised by his sister in Omaha after his parents died. So an Arleigh Burke class destroyer, let me just talk about that for a minute. Arleigh Burke class. So ships are named, the class is named, after the first ship that's built of that class. So Arleigh Burke was actually DDG-51. And this is DDG-142. So the Navy's really adapted this design for its, for its fleet of small combatants, destroyers. These are the destroyers that are currently in the Red sea that are shooting down drones and anything that's being thrown at the, at the merchants in the Red Sea. It's a very capable air defense platform. It carries 90 types of missiles, anywhere from anti-submarine rockets, to surface to air, to land attack Tomahawks. It's very capable. And that's why the Navy has adopted this class of ship for it's, really it's a majority of its surface combatants. And let me just tell you a little about the incident in which Petty Officer French was recognized. The 22 year old mess attendant-- so a mess attendant's a cook. So he's a, he's a cook. He's a first class, which is-- it's a-- that's the sixth rank, of a, of a enlisted man. So you start off an E-1. He was an E-6, and he can go up to E-9. But he was a 22 year old mess attendant that gained the nickname The Human Tugboat for jumping into the sea and towing 15 wounded shipmates in a lifeboat for hours through shark -infested waters after their ship was sunk near Japanese occupied Guadalcanal in the Solomon Islands on September the 5th, 1942. It is the tradition of the United States Navy to name their small combatants after war heroes. And so-- and there is a really an unusually high number of U.S. Navy ships that are named after corpsmen. And that's because, you

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate February 1, 2024

Rough Draft

know, corpsmen--United States Marine Corps is a light force, very light force, only about 100,000. A few, a few brave men, and, and that's because the Navy provides really all of the a-- the a-- all the doctors, all the corpsmen, all the dentists, all the lawyers, and so they can just remain as a small fighting force. So very typical to see Navy corpsmen out there on the battlefield with, with the Marines and a significant number of them give up, and give up their lives. And the Navy recognizes them by--

KELLY: One minute.

HOLDCROFT: --by-- Thank you, Mister President. Recognizes them by naming ships after them. And I would like to recognize that we have a corpsman in the unicameral, Senator, Senator Riepe started his, his Navy career in the San Diego and Balboa Hospital and served honorably as a corpsman in the United States Navy. So let me start off by talking about steam. So the Navy, when I came in, in the Navy in 1976, I reported to my first ship was, which was the USS Lang, FF-1060. So it was a Knox class frigate, which means the first ship of the class was named Knox. It was actually FF, FF standing for frigate, 1052. And so my ship hull number was 1060. And, so it was the eighth ship in the class to be built. And I reported aboard as a new young ensign--

KELLY: That's your time.

HOLDCROFT: Thank you, Mr. President.

KELLY: Thank you, Senator Holcroft. Senator Dorn, you recognized to speak.

DORN: Thank you, Mr.. Lieutenant Governor. Yesterday I got up and talked about some of the things that have gone on or that I've been involved with as an EMT. I also wanted to-- I think I forgot something yesterday. I, I will compliment Burlington Northern, they're the, the railroad that goes through, or-- from Lincoln to Adams and on down to southeast Nebraska. They did come down about 4 or 5 years ago. We have to have training, when you're an EMT, your-- you have to have so many hours of training every year. They did come down, they come down if I remember right from the Omaha office, and they gave us a 2 to 3 hour presentation on, on, I call it when something like a train derailment or other things with a train will happen. That was very beneficial. We had a really good turnout that night from all the people there. So they, they, they do partake in many of these safety things. And much of the discussion has been on the floor and about this bill has been

on the safety and the need for two people in there. And so I, I just wanted to make sure I also brought that up, that they were very kind, very generous, very, very knowledgeable people that came down and explained a lot of the ins and outs and the dos and, and the don'ts. For instance, they, they explained the horn, or why the horn blows every time it goes through a certain distance or a certain town or whatever those. And-- because there's always people that you hear about that really don't like the horns, and they want the horns not to blow in certain areas, and sometimes towns pass that or whatever, so. I do, I do have-- this is the result of some questions yesterday, or some comments made yesterday, and haven't talked to Senator Slama or Senator Bosn and they talked about the interstate commerce yesterday, and basically that there are certain guidelines and rules. And I both-- remembered both of them talking about when they started lawyer school, one of them, they mentioned about how they're given certain, I call it criteria or guidelines. And I, I visited with some other people yesterday and I guess I have another question, and it's not related to railroads, but it's it's, Proposition 12 in California, and the Supreme Court justices ruled in the last couple years, or last year that basically what they've done to the livestock people out there, now, they can do that. And, I know our, our hog industry across the United States fought that very much, so that they've implemented some rules State of California has. And those rules are now imposed, basically, the net result is it affects all of the other people too. Just, just more out of curiosity or something, I can sure visit with them off the mic, but when some of these things, it depends on who interprets what. Unfortunately, we do have a lot of things go to court and things like that. I do very much also want to thank Senator Slama for getting up and making some of the comments she did today about the Republican Party. Very disappointed in the fact that none of our five US representatives were endorsed. I know there's many of us senators that have come out and endorsed all of them. I really thank her for those comments this morning, and what our Republican Party in the state of Nebraska, why they did what they did, can't hardly believe it, but, very, very proud to have our U.S. delegation there, very, very thankful. I think they have done a tremendous job for our state. And why none of them were endorsed is beyond me. I guess we'll hear more in the days to come, but thank you. And I'll yield the rest of my time.

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

von GILLERN: Thank you, Mr. President. I'm going to, going to tag right off of what Senator Dorn just said and also add my comments and my endorsements and gratitude to our federal delegates, and just appreciate everything that they do. People asked me when I was running for office, have you ever thought about going to Washington? And my answer was a cold, hard no. That would, that would, that would be a sacrifice far beyond what we do in this room. And the people in this room give great sacrifice to do what we do to serve the state of Nebraska. But the level of sacrifice that those individuals make to go to DC and, and the things that they have to deal with, not the least of which the travel and sacrifices that they make for their family members are, indeed a challenge. And do I agree with every decision that every one of them has ever made? No. Do I understand better today than I did, a year and a half ago before I entered into office that you don't get what you want, you get what you can get. I would say yes. And each one of those individuals are working to do the best that they can to-- for the-- for Nebraskans here at home and trying to reach compromises that are reasonable in, again, are good for, for the people of Nebraska. I'm going to also tag off of something that Senator Dorn said about the train horns. I've got a railroad track that runs about 200 yards out the back of my, my house at home that-- our home in Elkhorn, and used to run a lot of coal up and down that line. It's not quite as heavily used as it was 6 or 8 years ago. But there's an intersection about a half a mile down the road, and they blow the horn before the intersection. And thankfully, that's not right outside of our window. But we do certainly hear it. And, and contrary to what a lot of people believe, you do become accustomed to that, and you almost kind of enjoy hearing and seeing the trains go by. So, back to the safety matters. And I mentioned this yesterday, and I want to say it again, in my, in my construction lifetime, we had an opportunity to pursue work with the railroads, and I have never seen a higher level of safety culture, than when we, when we were having conversations with the railroads. They, they quite often the criteria for their contract awards would always include a scoring process. And part of that scoring process would be your safety program and what your safety record was and what your work comp ratios were, and all of those facts and figures. And you had to prove that you were aligned with them in a mindset of safety. And I believe that that has played into their decisions, and including the decisions regarding two-man crew versus single person crew. And I think they've invested, and I don't think I know that they've invested millions and millions of dollars in technology in order to allow them to do this. And I believe that technology has actually made the single, operating, crew

even safer. Senator Jacobson talked about the safety switches, and the fact that you have to touch the controls every so often. And many of us have cars that have driving assist now, and that it's, it would be similar to that where if you don't move the steering wheel or touch the steering wheel within a certain number of seconds, the car begins to shut down. And some of those cars even have features where they'll pull over safely to the side of the shoulder. The version of that in the railroad car and the railroad engine obviously, is that the brakes are applied and the, and the, the train itself has stopped. So, I'm, I'm not concerned from a matter of safety for either the public nor the conductors or the engineers about moving to a single person crew. And I say that intentionally because it would be a move to single person crew, because currently policy that has been-- that is in place between the unions and--

KELLY: One minute.

von GILLERN: --railroads. Thank you, Mr. President. Determines that two-men crew is the, is the current policy. I have a document in front of me, which maybe I'll touch more on next time when I'm on the mic, that is-- that outlines some of the reasons behind the particular states making rules that are different than the federal regulations or there-- or that are different than rules that have been agreed upon between negotiated bargaining agreements. So I'll touch on that on my next time on the mic. I thank you for your time, and I'll yield the remainder of my time, Mr. President. Thank you.

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

BOSN: Thank you, Mr. President. Again, I have not committed where I stand on this, and that's why I was present, not voting out of committee. I took that position because I am a firm believer that there is going to be a federal regulation that is coming within the next month or so, specifically because it's listed on their website that it's coming out. And I know that's an unpopular opinion with several people, but that is my opinion. Here's my question. I am a safety person. Anyone who knows me knows that safety is a very important thing for me. I like seatbelts. Senator Hansen, I like helmets. I like safety, and I am persuaded significantly when there is a true safety issue. I have yet to hear data or numbers that actually back up a two-man crew is safer. What I'm talking about is having a number that says state X went from one man crew to two-man crew, and their incidences declined. Or this state didn't have a two-man crew

bill, and this is the number of accidents they had relative to a state that did have a two-man crew bill. Something substantive that persuades us there is a difference in safety between 1 and 2 people on the crew. I haven't heard that yet, so if someone has it, I am willing to read it. You can email it to me or bring it to me. Until then, this seems to be an issue of collective bargaining, an issue of adding red tape instead of removing red tape. The opposite of a laissez faire private business being controlled by the state, saying you specifically have to have two, but we aren't going to regulate anyone else because we don't really think those things are safety issues. I was provided an article this morning, and I'm happy to share with anyone, that talks about since 2000, the total number of reported train accidents have declined by 42%. I haven't seen anything that says that that's because there's two men on those crews, or that none of those crews have two men or have one man. Person, excuse me. We need to-- if we're going to talk about safety, back it up with something. I was also, as apparently the-- one of the-- sorry to my colleagues who are also attorneys, I'm now learning that's like a whole 'nother hat in addition to being a senator. A case that was before the Kansas Department of Transportation regarding proposed regulation, KAR 36-43-1. That's from July of 2023. And it specifically addresses these concerns. It states, among other things, I'll quote certain things in it, but I'm happy to share it as well. The Federal Railroad Safety Act creates a uniform national rail safety regime, preempting state law if the FRA has issued either regulations covering the same subject matter, or determined that no such regulations are appropriate. And FRA has repeatedly determined that minimum crew size rules are unjustified. Let me say that again. The FRA has repeatedly determined that minimum crew size rules are unjustified, and that a patchwork of state crew size laws would improperly burden interstate commerce and threaten rail safety. It goes on to say, one of the FRA's stated purposes is to prevent the multitude of state laws regulating crew size from creating a patchwork of rules governing train operations across the country. Here's what I take that to mean.

KELLY: One minute.

BOSN: Thank you, Mr. President. Having a train size that changes across the Kansas border, across the South Dakota border, across the Iowa border, Colorado, Wyoming will create a patchwork of rules. We'll have to stop a train, which we've heard lots of people complain about trains stopped blocking railroad crossings, and I will join in that frustration, to get an individual on or off if we have a patchwork of rules. The department's proposal also runs afoul of the Railway Labor

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 1, 2024
Rough Draft

Act, which prevents state laws that intrude on the collective bargaining process. State labor standards violate this restriction if they impose requirements narrow and stringent enough to effectively substitute the state as the bargaining representative. If this is truly about safety, let's talk what those numbers are. Thank you, Mr. President.

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

SLAMA: Thank you, Mr. President. And good morning again, colleagues. We'll get back on topic with the two-man crew right now, but my Twitter mentions after speaking the cold, hard truth about our state parties have just been fabulous. I've been called a six today, which, on like zero sleep and two months postpartum, I will take. But like the comments that are objectifying me are all coming from the trolls on the right, which I mean pretty well shows my point of the alienation of especially young Republican women from the party right now. But in any case, as Senator Bosn mentioned, being a lawyer, especially a Republican lawyer in the Legislature is definitely a different hat, and you end up getting quizzed about stuff that you are absolutely not an expert on. So I did turn to the experts, and I found a really helpful article, I think, and putting into layman's terms the constitutional issues with state regulations like two-man crew bills for rail. And this was published by Fletcher and Sippel law firm. And it covers the Illinois lawsuit for their two person crew law. And it was published October 2nd, 2020, written by Janet Gilbert. And a lot of law firms will publish articles like these that make issues, things in the news, more bite sized for people. It helps recruit clients, but it also is a really good source of information for people who might have questions about legal issues. These articles can be really helpful. Illinois two person crew law. Federal court declares the law preempted, but throws a lifeline to the state. In August of 2019, Illinois enacted a two person crew law. On September 30th, 2020, the Federal Court for the Northern District of Illinois declared the law preempted. The lawsuit challenging the Illinois law was brought by the Indiana Railroad Company, along with the AAR and the ASLRRRA. The Illinois law is similar to a number of statutes passed by or pending in several states. The FRA's announced in May of 2019 when it withdrew its two person crew rulemaking that no regulation of train crew staffing is necessary at this time, and the FRA intends for the withdrawal to preempt all state laws attempting to regulate train crew staffing, end quote. The Federal Railroad Safety Act, FRSA, authorizes the FRA to regulate rail safety. However, the FRSA also permits a

state to regulate rail safety so long as the FRA does not, quote, prescribe a regulation or issue an order covering the subject matter of the state requirement, end quote. A federal regulation or order covers the subject matter if, quote, the federal regulations substantially subsume the subject matter of the relevant state law, end quote. This is from the case CSX Transportation Inc. v. Easterwood in 1993. In reaching its decision, the court answered a key question in the affirmative, but left the door open for a possible second bite at the apple for the state. So the first question asked in this article is, is the FRA's withdrawal of its rulemaking on crew size an order as specified by the FRSA? The court said yes. The court opined in this Illinois case that for purposes of preemption, it is not the form of the FRA's ruling that is critical. It's the process by which the FRA reached its decision. In the case of crew size, The FRA clearly considered the subject matter, issued a proposed rulemaking, received thousands of comments about the proposed rule, held public hearings, and elected to withdraw its proposed rule. The FRA considered the subject matter of--

KELLY: One minute.

SLAMA: --crew size-- Thank you, Mr. President. --opted not to impose any rules, and specifically stated its ruling was intended to preempt at-- any state rulemaking of the same subject matter. The FRA's pronouncement qualifies as an order under the FRSA. Like this court in Illinois, I'm willing to throw a lifeline here. I do think this is a federal issue. I do think they are handling it on the federal level. We'll know more by the end of March. If Senator Jacobson would be willing to bracket his bill, which I don't think he will be, and that's totally fine, until April, the start of April, to show that the feds haven't taken action yet, I'd be more than happy to do that. And we could move on to the daylight saving versus standard time debate, which is, I'm sure, just as fascinating. Thank you, Mr. President.

KELLY: Thank you, Senator Slama. Senator Jacobson, you recognized to speak.

JACOBSON: Thank you, Mr. President. I guess I'll start at the end with Senator Slama's offer to me. Absolutely. I'm willing to bracket the bill once it gets to Select File. So take it to Select File, I'll bracket the bill for Final, and we'll wait till the end of March to see what happens. But am I willing to bracket a bill on, on, General? No. So we'll just deal with that first. But thanks for the offer. Oh, gosh. Yeah, you got my back. So let me go back. First of all, I want

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate February 1, 2024

Rough Draft

to address the issue of the first call the question. And let me be very clear. I'm not asking anyone to call the question on this bill. I know the drill. I know the rules. And the rules are pretty simple. You have a bill up and you can call the question and we can move to a vote. And then another amendment will be filed. And we can call the question on that amendment, and we'll vote on that. And another amendment will be filed. And that will continue until eight hours have gone by. So other than making some entertainment, so we can change the pace a little bit by calling the question and then having a call the house and getting people out of their offices to come down here and vote, you know, we're going to go eight hours. OK, we know that. So I'm not trying to block any amendments. So that's why I'm not filing any priority motions. I'm wanting to take this to our cloture and at that time, vote on this bill. And obviously, I think I've demonstrated there are 25 votes here to pass this bill. And that's why it's being filibustered, because you need 33 to invoke cloture. And so the question is going to be, do I have 33? And we'll find that out tomorrow noon. Until that time we'll continue through the, the process here. Let me deal with another part on why was the question called when it was, why did Senator Day call the question. Well the Super Bowl is coming up, so let me use, and I explained this to my wife when I was talking about the rule. Think about what football teams do. A quarterback, when he's trying to figure out whether the defense is playing man to man or zone, what do they do? They send a man in motion because if one of, one of the people in the backfield go in motion, and one of the linebackers goes in motion with him, we're playing man, we're playing man to man. If the motion man moves and nobody moves in the defense, we're playing zone. Why is that important? Now I know where the holes are going to be, now I know where to throw the pass to. OK? So why-- what's that have to do with any of this? I know many of you are scratching your head, what's the deal? Has this guy lost his mind? Is he going off in the ditch? No. There is a point to this. The point is, is that we didn't know whether this bill was going to be filibustered for sure, until we called the question. And when the amendment got filed after the question was called, it's game on. Now, we know we're in a full blown filibuster. That's how this works. So for everybody at home, that's how this works. And so I'm perfectly content to let this run. You probably won't hear a lot from me. I'll get up every now and then and clarify some errors in this, the what has been said, and hopefully add some new information. I would suggest to anyone that there are people here that are railroad workers. If you want answers to specific questions, I'd advise you to go talk to the people that actually run these trains every day and ask them how it

works. And let me address a couple of things. First of all, when it comes to the single person, if we went to a single person, think about this right now. You're going to go 12 hours. How long is that? That's going into a cab-- cabin that's sterile. No cell phone, no telephone, nothing.

KELLY: One minute.

JACOBSON: You're in this cabin all alone and you're driving, a tr--it's like driving your car from here to San Antonio, Texas, with nobody to talk to. No cell phone, no radio, no music. Just looking ahead on the train. Let me also tell you before time is up here, I do want to mention that in the week of January 17th in Nebraska, Union Pacific Railroad had three vehicle accidents crossings: Columbus, Glenvil, and Sydney, Nebraska. In each of these cases, the conductor and engineer attempted to get trains stopped in time. The conductor went to render aid, when they could. It took two hours in one case for the railroad official to get there on the scene. That's the value of the conductor. Thank you, Mr. President.

KELLY: Thank you, Senator Jacobson. Senator Lowe. You're recognized to speak.

LOWE: Thank you, Lieutenant Governor. I have spoke-- by the way, thanks for the reiteration on football practice. I have spoken about my two year old grandson, and his favorite word is choo choo. As a matter of fact, he has named a stuffed animal Choo Choo. It's a little black lab stuffed animal. But that's his favorite stuffed animal because his favorite word is choo choo because of his love of trains. So don't get mistaken that this filibuster is against the railroad, or against the employees of the railroad or anything else. It's just policy that we're concerned about. And the state crew size laws are preempted by the ICCTA. The ICCTA is the Interstate Commerce Commission Termination Act. The proposed Nebraska crew size law conflicts with the preempted-- is preempted by ICCTA, and provides that the jurisdiction of the Surface Transportation Board over transportation by the rail carriers and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, facilities of such carriers is exclusive, 49 U.S.C. 10501(b) (emphasis added). Because ICCTA's remedies are exclusive, they preempt the remedies, remedies provided under federal or state law. Congress' intent in the ICCTA to preempt state and local regulation of railroad transportation has been recognized as broad and sweeping.

Congress emphasized that the state regulation would undermine the uniform-- uniformity of the federal standards, and risk the balkanization and subversion of the federal scheme of minimal regulation for this intrinsically interstate form of transportation. ICCTA preempts all state laws that may reasonably be said to have the effect of managing or governing rail transportation, while permitting the continued application of laws having a more remote or incidental effect on rail transportation. State and local statutes or, or regulations are preempted categorically if they affect the managing or governing of rail transportation. Basically, what this is saying is what we do here, if we pass this, is not going to really take effect because the federal regulations will supersede us. So should this be between management and the union? Yes. I believe that's where this needs to be. I don't believe that the state should get into this. I know that many of us have rail yards or have rails that run through our towns, whether it's Union Pacific or Northern Pacific or others. Burlington Northern. And we are all affected by the railroad. And we are grateful for the railroad and what it brings to our communities and to our state.

KELLY: One minute.

LOWE: Thank you, Lieutenant Governor. So please don't take this, the stalling technique that we're using, that we're against the railroad or in-- or its employees. Its policy. It's something that we shouldn't be involved in at this time. We should let this work itself through with the federal delegation, and then we'll-- we will all be supportive. Thank you very much.

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

BOSTELMAN: Thank you, Mr. President. Good morning, colleagues. Good morning, Nebraska. I stand in support of LB31. Again, I think this is a-- it came out of committee 6-1-1. So it come out of committee 6-1-1. So this is an important bill to move. It's-- Senator Jacobson said that, you know, there's things that he's willing to make sure the FRA has that opportunity to, to look at it, to make their decision. I think those are all generous things that Senator Jacobson said. I support that, and I yield the rest of my time to Senator Jacobson.

KELLY: Thank you, Senator Bostelman, Senator Jacobson, you have four minutes, 20 seconds.

JACOBSON: Thank you, Mr. President. I do want to speak a little bit to the comments by Senator Lowe, another good friend of mine, both before and after we get done with this debate. As it relates to the enforceability, the other states that have passed this bill are enforcing that rule. Illinois is a-- is a carve out because it primarily dealt with Conrail, but the other states are enforcing the rule. Also, I want to talk a little bit about what the FSRA [SIC] and RF-- and the FRA. FRSA is the safety division of the FRA. OK?. They can bring rules, and what was, as Senator Kauth spoke earlier, what they were ruling is that the states can do what they choose to do. OK? It does not, as we're finding in other states and as we're finding with the, again, the Court of Appeals and in the Ninth Circuit, they've said that those state laws can move forward. OK? So I'm not here to settle the legal issue. If you believe it's not enforceable, then what's the harm in passing the bill? If you believe it's enforceable, which I think most do, that's why the bill is being fought. Again, all I'm asking through this bill is to think about the public safety. Think about the people because of the number of incidents. I gave you that statistic yesterday. Nationwide accidents are up 32% from a year ago on UP, and and and BNSF is up 11%. So if the technology is so great, then why is it failing? Why is it failing? That's what's causing-- what's causing our derailments is maintenance. So I am curious as to whether or not this body, if you don't think the two person crew is the answer, which is what I'm telling you is the-- is what we deal with as a result of the safety problems. Are you prepared then to come in and start enforcing the safety issues that are causing the derailments to begin with? Because I realize we're dealing with the treatment of the lack of safety which is causing the derailments, and I don't want to turn a blind eye to either one. But I can tell you 11 other states saw it important to deal with this issue. And that's why I brought the bill. And until you're the person or the relative of a person that's in that car, or in that school bus that got hit at an unmarked crossing and no one could render aid, it's hard to really fully, I guess, appreciate the value of that conductor. So again, this is a safety issue. This is a safety issue for the public. It's also a safety issue for that single crew member who, if you're on that trip to San Antonio or if you're in that trip, in this case to Gillette, Wyoming, and you're in areas where there's no other people out there, there's no road, you're in the middle of nowhere and you're that lone engineer and you have a health event, you're dead. Because there's no one there to help you. There's no one there to help you.

KELLY: One minute.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate February 1, 2024

Rough Draft

JACOBSON: We have-- we have two person crew today on the Burlington, or on the UP. There-- that's not been negotiated into the Burlington contracts. So we have the rulings today. They're in place today. Earnings are way up this year over a year ago. It's not an earnings issue. It's making more money. At what point do we start putting safety to the public and to the crew members at a higher priority? Thank you, Mr. President.

KELLY: Thank you.

JACOBSON: Thank you Senator Bo--

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

CONRAD: Thank you, Mr. President. And good morning, colleagues. I rise in support of LB31, and want to thank my good friend, Senator Jacobson, for his leadership in regards to this important measure. And, I'm proud to be a co-sponsor of this measure, along with, a really diverse set of colleagues who stepped forward to say this issue has languished for far too long, and it's time that we finally get some resolution thereto. I think that this is a critical workers rights, health and safety issue. I think this is important for public and consumer protection. I think that this has clear and undeniable benefits when it comes to the potential issues and disasters our first responders may be facing. And I think that we have a host of experiences from our sister states that show that this is one part of the solution to making sure that we're keeping our communities, our state and our country safe. And I have been watching this issue play out for many years and was definitely-- it definitely reaffirmed my commitment to the measure when I was preparing for the debate and had a chance to look at the updated safety statistics that Senator Jacobson had passed around, which shows the very exigent need, particularly in Nebraska, with ongoing issues related to rail safety, and which marks Nebraska as on the top of one of those lists you don't want to be on the top of, in terms of, I think it was listed as Nebraska as the, perhaps, fifth highest state when it comes to rail safety issues. And so I think that the time is absolutely right to readdress this issue and bring some resolution. Also, there's so much going on in this legislation, and I'm thinking about the deep, proud history in Nebraska, that populist tradition in everyday citizens and agrarian interests and family farmers fighting back against moneyed interest and railroad barons, but also recognizing that uneasy relationship where we want the railroad to come through because of the

economic benefits to our communities and to ag as well. So, those ideas were definitely swirling in my head in preparation for the debate. The other thing that I wanted to make sure to talk a little bit about was this complex issue of preemption. And, friends, let me be clear whether or not they take it up in first year or second year, depending upon how your law school course of study is structured, no matter when they take it up, it is, it is not easy, it is not simple, and it is not straightforward. It is actually very complex and probably far too complex to give due treatment to in just a few minutes on the mic. But I'm going to try my best to start and will hit my light again if I get cut off. But essentially you don't just say preemption, and then that's where the conversation starts and stops. In fact, what preemption really is, is it's grounded in the Supremacy Clause of the US Constitution, Article VI, Section 2. And we have to look at that, and then we have to look at how the courts apply that against other aspects within the Constitution, and court case law, and state law. So if, essentially, you find that federal law conflicts with state law in many instances, generally speaking, that, that would kind of tell us what we need to know, that the Supremacy Clause would say that in areas of conflict, the federal law would control--

KELLY: One minute.

--over-- Thank you, Mr. President. --conflicting state law. However, then when you start to do a preemption analysis, you look at the laws themselves. Was the federal law, and these are two questions you ask, expressly preempting the state law? Or is there an implied preemption there? And there's two kinds of implied preemption, field preemption, and conflict preemption. And these issues pop up all the time, not just in regards to rail safety, but other areas of workers' rights, health, and safety. Think about pipeline safety. Think about minimum wage. Think about immigration issues. Sometimes this federalism plays out as a ceiling, and sometimes a floor. But the important thing to remember is that when there is an opportunity or flexibility or room for states to act, they can and they should. And I would contend that we have that flexibility and room to act in regards to this issue now.

KELLY: That's your time, Senator.

CONRAD: Thank you, Mr. President.

KELLY: Senat-- Senator Albrecht, you're recognized to speak.

ALBRECHT: Thank you, Mr. President. Again, I rise in opposition to LB31. I know that there are many other people watching today that may not have been watching yesterday, so I'll try not to repeat everything I said yesterday, but I think it's important for the state to know and understand how we really do feel, how Nebraska feels as a state about our local rails. The different companies that are here in our state, we very much appreciate how they conduct business. They're taxpayers, just like we are. Which gives me another reason and pause to get inside of their contract negotiations with their employees. But they're always there. You know, we, we appreciate the employees that they have just as much as management, as just as much as, as everyone who is, is taking care of business when it comes to the safety of our railroad, the railroads in the state of Nebraska. But yesterday I did ask for Attorney General Mike Hilgers. We asked for an opinion to find out the preemption on LB31, that would require the train crews of at least two people as prescribed in the bill. Should Nebraska Legislature go forward at a state level with the LB31? Or should we wait on a federal ruling in March? We do have plenty of time. I think this discussion is good. It's pretty evident where everybody sits on this bill so far, because most of the-- and I normally never say this, but there aren't a lot of people on the floor. But when I decided to run for this, I watched for one year to see how everybody conducts themselves on this floor. And generally speaking, when a lot of folks are gone, they have made up their mind, they kind of know where they sit. And for Senator Jacobson, I understand you've got the largest rail in your, in your district. And to represent the people that have asked you to do this, this is part of our job. And with that, I just really want everyone to understand that on where I come from on it and why I'm in opposition, is I don't believe that we need to be in the contract negotiations with members of the employees and the employee union and their management team. So with that, I'll yield my time back. Thank you.

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

KAUTH: Thank you, Mr. President. I'm going to continue what I was, speaking about earlier. After three years of consideration, the FRA removed their notice of proposed rulemaking. That removal order stated that it was intended to provide what the Supreme Court referred to as negative or implicit preemption. The court recognized that where failure of federal officials affirmatively to exercise their full authority takes on the character of a ruling that no such regulation is appropriate or approved pursuant to the policy of the statute, any

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 1, 2024
Rough Draft

state law enacting such a regulation is preempted. Following its withdrawal order, the FRA issued a separate rule expressly giving railroads the right, subject to FRA approval, to determine how to evaluate and mitigate risk when implementing reductions in crew staffing levels. Basically, the railroads know themselves better. The railroads are held to incredibly high standards. If something happens, they're the ones who are holding the bag. They're the ones who get sued. It is in their best interest always to make sure that safety is the top priority. So when they're making these studies, when they're saying, hey, we think only one person is necessary in those rare instances, they've done the work. In 2022, the FRA issued a new notice of proposed rulemaking entitled Train Crew Size Safety Requirements. This NPRM reverts back to the approach adopted in the 2016 NPRM and would require two person crews in at least some circumstances. But as of today, that rule, that proposed rule remains pending. They are, are still deciding. And that's what we're waiting for in March. Once we have more from the Department of Transportation, we'll be able to understand a lot more about what's going on. For right now, the Doyle test is met for preemption of any crew size state law. It does not matter for those purposes what form the FRAs consideration has taken. The important thing is that the FRA considered a subject matter and made a decision regarding it. The particular form of the decision is not dispositive, nor does it matter that the FRA's current posture is to leave the issue to railroad discretion and or collective bargaining process, or that its position could change as the pending NPRM becomes final. All that matters is the federal government has affirmatively analyzed a train crew size issue, and thus any state regulation is barred. Again, this is part of the collective bargaining process. And I would-- I would question whether or not the, the people who are in the collective bargaining process would want the state to tap into more issues. This is one where if we say yes, you have to have a two person crew, the unions can be very happy. But are there other issues where we would say, hey, we don't think that's necessary, that they're going to be unhappy? I think this opens up a huge can of worms, and allows for much more government intervention that we don't need. The crew size requirement is not necessary to eliminate or reduce an essentially local safety or security hazard. Again, local control is the best. And the people who have been running these trains for years, people at Union Pacific, they get in there and they stay there. They have been working in that company for decades. These are people who know the train industry. I would just like to further say, I agree with Senator Lowe and Senator Brad von Gillern that trains are so important to our economy, to our state. I laughed when Senator Lowe

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 1, 2024
Rough Draft

was talking about his grandson calling his train his teddy bear. Choo Choo. It is something that--

KELLY: One minute.

KAUTH: --strikes-- Thank you, Mr. President. --strikes awe into every one of us. When we first moved here, one of the very first places I took my kids to visit-- we have museums all over Omaha. The first place we went to was Union Pacific. And then across the river to Council Bluffs. They have this super cool museum where you can actually climb on old trains. And I have three boys. The climbing involves some jumping that I'm not sure was probably OK, but trains have fascinated and captivated us since their, their initial beginning. We support them and we encourage them to continue working in our state. We want to make sure that they feel welcome here. Thank you.

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

HOLDCROFT: Thank you, Mr. President. So again, I'm speaking about the advances in technology that have allowed the Navy to significantly reduce its manpower requirements, and, and back to something that, actually, Senator Jacobson just said on the mic. There's more than just technology that has to, to come along. There are training programs. There are maintenance programs. And I'll try to touch on those also, as we talk about the success of the Navy moving from steam propulsion to gas turbine propulsion. So I was talking about my first ship in 1976, walking aboard the USS Lang, FF-1060. It was a Knox class frigate. And it was, it was the sixth in the line. Lang himself was a, actually, war hero from the War of 1812. So that's how far back the Navy goes to, to name ships after war heroes. So, I went aboard the USS Lang in 1976. The USS Lang is a single screw. It's, it's about 4,000 tons. 350 feet long. That's a football field so it's not something that-- it's not a little fishing boat. But it had 1,200 pound steam as its propulsion means. So the way it works is you have steam that's at 1,200 pounds per square inch. Now, how do you generate that? You have to have boilers. We had two boilers. And you, you light the boilers and you start boiling water, and if you know anything about boiling water, you know at one atmosphere, water boils at 212 degrees. And as long as the steam is in contact with the moisture, with the water, it stays at 212 degrees. You can turn up the heat, but all that does is increase the steam generation. It doesn't increase the temperature. And that's what we really wanted to do with the, the

steam. And so the first thing we do is we put it under pressure, we bring it up to 1,200 pounds of pressure in an enclosed system, and that will bring the temperature of the water actually up to about, about 700 degrees. So, and again, you're-- you increase the, the, generation of the steam by increasing the, the amount of BTUs, energy that you put into the firebox. And then to get even more potential energy, we take the steam away from the water, from contact with the water. We put it into what they call superheated, pipes, that go back through the firebox and get again increased in, in temperature, to about 950 degrees. So you've-- got now you've got 1,200 pound steam that's at 950 degrees, tremendous potential energy, but very, very dangerous. I mean, a steam leak will kill someone in a matter of seconds. And so there, there, therefore, that drives a lot of requirements for manning to make sure that the boiler operates in the right-- at the right-- within the right parameters, that the fuel pumps are working correctly, the cooling systems are working correctly. And so that drives a lot of manpower requirements. We take the steam, then, out of the fire room, and we move it to the engine room where we have steam, a steam turbine. And the steam turbine, then, turns the shaft. There's a reduction gear in between that-- it reduces the speed of the turbine to the speed of the shaft by about 20 to 1. So 20 rotations of the turbine, one rotation of the shaft. Also, this is all again, a pretty, manpower intensive, to make the--

KELLY: One minute.

HOLDCROFT: Thank you, Mr. President. To make the ship go in one direction, you have a man standing there with a wheel. He opens up the, the throttle. It allows more steam to go into the turbine and increases the RPMs on the shaft. And that's how we really determine the speed of the ship is by the RPMs, rotations per minute on the shaft. And if you want to go in the other direction, you have to close that valve and open another valve, which then ports the steam into a different set of, of valves that turn the shaft in the other direction. So this is the-- that's-- this is the old technology. What's really interesting to me is that we take this 1,200 pound, 950 degree temperature, the steam, and after it goes through the high pressure turbine and the low pressure turbine, it actually goes into a condenser and becomes a vacuum. So we actually have, we go from 1,200 pounds per square inch, into a vacuum, and to actually condense the steam back into water.

KELLY: That's your time, Senator.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 1, 2024
Rough Draft

HOLDCROFT: Thank you, Mr. President.

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

LINEHAN: Thank you, Mr. President. And thank you, Senator Holdcroft, for a lesson on, I think, physics and engineering and very helpful. I mentioned this the last time I was on the mic, but I'm going to read just-- and then hopefully I'll have the pages distribute this. Freight rail employees are among the highest paid in the nation. The average freight rail employee earns 52% more than the average U.S. employee, 52% more. In 2022, class one freight rail employee compensation, including benefits, averaged about \$143,000 per year. Rail jobs range from locomotive engineers, which we're talking about, train dispatchers, maintenance professionals, to law enforcement, IT and industrial development experts. Railroad's retirees are covered by the Railroad Retirement system, which is separate from Social Security, and is funded by railroads and their employees. In 2021, nearly 500,000 beneficiaries received \$13.4 billion in benefits from the railroad retirement. I remember this because in the early-- I don't know if it was the late 1990s or early 2000s, when I was working in the US Senate, a senator from Oklahoma tried to do away with the Railroad Retirement system and roll it into the Social Security system, which was not ideal for the railroad employees, and that did not pass. But I remember it was a heck of a fight, not kind of unlike this one. Railroads also are safer than most other industries. When it comes to worker safety, the data tells the story. Railroads are safe and continue to get safer. Over the last ten years, the class one railroads have averaged just one-- have averaged just over one employee injury, illness or fatality, referred to as a casualty in FRA databases, per 100 full time equivalent employees. Obviously, any accidents, injuries, fatalities are too many. But so we understand, these industries all have a higher incidence: Mining. Construction. Manufacturing. Inland water freight train-- transportation. Trucking. Agriculture. This surprised me, grocery stores. And air transportation. Approximately-- I think this is probably why they have a very strong union-- approximately 85% of class one rail employees are unionized. 85%. The rail employees are represented by one or more of a dozen different labor unions. Their last round of negotiations, employees received historic wage increases. And I don't know if you recall, but this was in the papers for weeks and weeks. The employees received historic wage increases and maintained best in class health care, and meaningful progress was made in creating more predictable

scheduled work shifts and time off policies. And what this doesn't say, but what's been said on the--

KELLY: One minute.

LINEHAN: --floor several times, that agreement also included two people on the train. It was part of their negotiation in which they negotiated historic wage increases, the best in class health care, and more predictable scheduled work shifts. And two people on the train. So I don't think, again-- this is an industry that's important to America, and they should work harder to make it more safe. But we should not involve ourselves in something that is negotiated every five years between management and unions. Thank you, Mr. President.

KELLY: Thank you, Senator Linehan. Senator von Gillern, you're recognized to speak, and this is your third time on the floor amendment.

von GILLERN: Thank you, Mr. President. I want to read from some information that I found about an application or an app that's-- that is used to increase rail safety. The conductors are not the only way for first responders to obtain information on train car contents. This information has now been more widely yet securely disseminated in the first responder community. The AskRail app, launched in 2014, is a collaborative effort among the emergency response community in all North American Class I railroads. The app provides more than 2.3 million first responders from 49 states, the District of Columbia, and eight Canadian provinces with immediate access to accurate, timely data about what type of hazardous materials a rail car's carrying so that they can make an informed decision about how to respond to a rail emergency. Railroads have dramatically exceeded this goal, with AskRail information now available to more than 2.3 million first responders across the U.S. and Canada. Through our work with dispatchers in emergency communications centers and CHEMTREC, an emergency call center for hazmat handling. Railroads have contacted each of the nation's emergency communication centers about integrating AskRail into their systems. More than 102 are fully on board, and another 81 are currently in the onboarding process. In addition to expanding the availability of AskRail, this new approach enhances the continuity of access of information and streamlines communications to allow for a more efficient response. So, it's good to know that the railroads are working with communities and first responders because, as we do know and has been mentioned in testimony in the past couple of days, we do know that they handle hazardous materials. And for

those first responders to be aware of what's on board of those trains is, is critical. And I do know that the trains on the sides of the cars, just as semi tractor trailers are required to, have a coding system on the side of the cars that also tells first responders what's on board and allows them to respond properly. I do have another document I want to refer to, and this is a plaintiff's motion for summary judgment. It is the Association of American Railroads is the plaintiff versus Dave Yost, the Ohio attorney general, as a defendant. And I'll just read a portion of that. It says Congress has exercised broad regulatory authority over rail transportation for well over a century. During that time, Congress and federal regulatory agencies, including the Federal Railroad Administration and the Surface Transportation Board, have declined to impose minimum train crew sizes on railroads. Rather, crew size has been established on each railroad through collective bargaining. Federal law expressly prohibits Ohio from establishing a minimum crew size. I'm going to read that again, because I think you could remove the word Ohio and insert the word Nebraska or any other state. Federal law expressly prohibits Ohio from establishing a minimum crew size. In 1973, Congress enacted the Regional Rail Reorganization Act to address a railway, railway crisis in the northeast and the midwest. Section 711 of the 3R Act provides that no state may adopt or continue in force any-- continue in force any law, rule, regulation, order, or standard requiring the corporation to employ any specified number of persons to perform any particular task, function, or operation, or requiring the corporation to pay protective benefits to employees, and no state in the region may adopt or continue in force any such law, rule--

KELLY: One minute.

von GILLERN: --regulation-- Thank you, Mr. President. --order, or standard with respect to any railroad in the engine, or in the region. Excuse me. Ohio is a state in the region. As a result, the plain text of the 3R Act prohibits Ohio from adopting any law requiring any railroad in the state to employ any specified number of persons to perform any particular task, function, or operation. Nonetheless, in March of 2023, Ohio enacted the Ohio Revised Code, the crew size law, which requires that all freight railroads operate in almost all circumstances with at least two crew members. Specifically, the crew size law mandates that a train or light engine used in connection with the movement of freight shall have a crew that consists of at least two individuals, with exceptions only for hostlers, service, or utility employees. That mandate cannot be squared with the 3R Act.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 1, 2024
Rough Draft

KELLY: That's your time, Senator. Thank you, Senator von Gillern. Senator Wayne, you're recognized to speak.

WAYNE: Thank you, Mr. President, colleagues. When we just make sure we're speaking clearly on two-man crew, we're not saying 2 Live Crew. That's a rap group. I just don't want people googling the wrong thing. And I'll yield the rest of my time to Senator von Gillern.

KELLY: Senator von Gillern, you have four minutes, 40 seconds.

von GILLERN: Well, thank you for that, Senator Wayne. Heads up would have been good, but I appreciate it anyway. I'm not running out of material, but I do have a copy of the most critical and pivotal paragraphs of the book, *The Little Engine That Could*. And that may make an appearance tomorrow. So I'll continue on with my reading about the Ohio ruling. The mandate cannot be squared with the 3R Act. As the U.S. District Court for the Northern District of Illinois concluded two years ago in striking down Illinois' virtually identical crew size law, the 3R act defined a region that includes Illinois and set out certain restrictions on how states in that region can regulate railroads. Illinois must abide by those restrictions, and in passing the crew size law, it failed to do so. Like Illinois, Ohio wants to mandate a crew size of two to perform the task, function or operation of moving freight with a train or light engine. This is exactly what the 3R Act prohibits. And I'll insert my own words here, exactly what would be prohibited in the state of Nebraska. And then back to the document. Because the 3R Act resolves this case, the court can grant summary judgment to AAR without reaching any of the other claims. If the court is inclined to reach those claims, it should hold that the crew size law is inconsistent with the preemption provisions in other federal laws regulating railroads. The ICC Termination Act grants the STB exclusive jurisdiction with respect to regulation of rail transportation, and FRA's determination that no crew size regulation is necessary or appropriate for remote control operations preempts a crew size law under the federal Rail-- Railroad Safety Act to the extent that the law governs such operations. AAR is entitled to summary judgment on each of these claims because there are no material facts in dispute, and the crew size law cannot stand as a matter of law. This court should hear oral arguments, given the importance of the constitutional issues presented. And then under the background it says, technology has enabled a gradual reduction of the number of trained crew members from about five in the 1960s to around two in the end of the 1990s. Among the major technological breakthroughs that enabled reduced crew sizes were the advent of diesel locomotives,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 1, 2024
Rough Draft

which eliminated the need for firemen, and the end of train devices that, as was referred to yesterday by Senator Lowe, the cabooses that he misses, which remove the need for a caboose and one more crew member to be added at the rear of a train. Throughout this time, crew size has been an issue for labor relations. That is, debates over crew sizes have historically been resolved through collective bargaining between railroads and unions, rather than under the guise of safety regulations. I think that's one of the most important things I'm going to say today, or at least in this time on the mic, is that collective bargaining between railroads and unions, rather than through the guise of safety regulations, is how this issue has been resolved in the past, and should be continued to be resolved that way in the future. Reading on. Congress has expressly prohibited Ohio from regulating minimum crew size. In 1974, Congress passed the 3R Act to address a railway, railway crisis in the northeast and midwest. The 3R act was designed to reorganize the railroads in those regions, bringing them under the control of a new government corporation, Conrail, that would create a plan to turn them in a single, economically viable railway, railway system. That's a tough word. The 3R Act included prescriptions specific to the region most affected by the railway crisis.

KELLY: One minute.

von GILLERN: Thank you, Mr. President. The region defined to include Ohio, 16 other states, and the District of Columbia. One of those prescriptions added by the Northeast Railroad Service Act of 1981 expressly states that no state in the region may adopt any law requiring any railroad in the region to employ any specified number of persons to perform any particular task, function, or operation. The legislative goal was to give Conrail, the federal, federally created successor to numerous bankrupt rail carriers, the opportunity to become profitable, but not necessarily to disadvantage all other railroads at the same time. Thus, Congress enacted-- extended the 3R Act's preemption provision not just to Conrail and its successors, but to all railroads in the specified area. And that's a good stopping point, there. Thank you, Mr. President.

KELLY: Thank you, Senator von Gillern. And Senator Erdman, you're recognized to speak.

ERDMAN: Thank you, Mr. President. Good morning. As I listen to the debate today, and I heard Senator Lowe made a comment about we are all affected by railroads. That's a true statement. Some of us are affected far more than others. And I want to share with you what

happened in our region, in my county back in 1999. The railroad has a very steep incline to climb east of my house. They have to have two pusher engines to get the rail-- the train up that rail going to Alliance, Nebraska, because of the steep hill. So they concluded that if they made a new line that was at a 2% grade, they could arrive at the top of that hill without using pusher engines. So they began the process of designing the rail, where it would go, and what land they needed. There were 40 plus landowners involved in that route. They arrived at my place for the first time, and they said they wanted to do surveying and soil samples to discover if that was conducive to holding the rail. And I had suggested that they needed to have better authority than what just asking would do. And they said, we have eminent domain and we have the authority to do that. And I said, that only works after you've been to court and taken that authority, given that authority by the courts. So over the next year, year and a half, they had asked several of these landowners to allow people to survey their property and take soil samples, and about half of that group did. They then filed eminent domain against the rest of us who did not readily sign on. They were going to take my parcel of land, the one that was most particular damaged by this, and go right through the center of one of my center pivots, right over top of my well. I would have lost production on that whole quarter section, 160 acres, because of the railroad. They took no consideration for those landowners who were going to be adversely affected because they have eminent domain authority. So to say that I'm for 2-man crews because of that, that's not the case. But I wanted to make the point that the railroad does affect us and sometimes it's adversely. We did go to court. They were unsuccessful in getting eminent domain for that prop for that route. They won in district court-- that we won in district court. They appealed and we won there as well. There is no rail going through my property. So be careful when we say the railroad affects us all and you're insinuating, insinuating that that is positive effect. It is not. So the reason the railroad has those big box cars, box cars on their trains, that's where they store all their money. So I'm in favor of LB31. And I think that those of you that are concerned about your constituents would be in favor of it as well, because your constituents work with the, with the railroad or work for the railroad. So don't let someone or anyone tell you that the railroad is your friend, because I don't feel that way. Thank you.

KELLY: Thank you, Senator Erdman. Senator Slama, you're recognized to speak. And this is your third time on the-- your floor amendment.

SLAMA: Thank you, Mr. President. And good morning again, colleagues. I, I do appreciate Senator Erdman's comments and absolutely hear his criticisms. Any time anybody is abusing, in my mind, eminent domain or the legal system, it's certainly something that is a battle worth fighting. But it doesn't justify supporting a bill that violates the constitutional delegation of power, for the federal government to regulate interstate commerce. Which brings me back to the article analyzing, analyzing the 2-man crew bill. Sorry, I need more caffeine-- analyzing the 2-man crew bill, specifically in the Illinois case and how that was specifically found to be a violation. So, again, this article is entitled Illinois Two-Person Crew Law: Federal Court Declares the Law Preempted But Throws a Lifeline to the State, by Janet Gilbert, on October 2, 2020. This was put out by the law firm, Fletcher and Sippel, LLC. We're down to the second frequently asked questions on this Illinois case, which is, but is the FRSA order a valid order? Did its promulgation follow the rules required for implementing a federal order? The court's answer to this question was simple. We don't have jur-- jurisdiction over that question. Challenges to the validity of a federal order, by law, must be presented to the Federal Court of Appeals. The Federal Court of Appeals has exclusive jurisdiction over challenges to the validity of final federal agency actions, and in fact, the validity of the FRA crew size order is being challenged in the Ninth Circuit, in an action consolidating a number of different challenges to the FRA's order. Without a Court of Appeals ruling on its validity, district courts must presume the agency action is valid. So the agency action specifically saying that federal law trumped the 2-man crew state laws is presumed to be valid until the Court of Appeals rules otherwise. Hence, the NDIL court ended its decision with a lifeline to the state: If the Ninth Circuit should deem the order invalid, the state of Illinois can move to have the district court decision vacated. And that's the conclusion of that article. But it does get to a really good point on my main concern with the 2-man crew policy and why I've opposed it overall. There's no data pointing towards increased safety with the 2-man crew. In fact, many studies have pointed there's either no difference or any minor difference, leans towards the single-man crews, especially those that we see in Europe. We have issues with constitutionality, and I'm just not seeing a convincing reason. There's a reason why this bill hasn't moved in the years and years it's been brought. I understand that Senator Jacobson is going to bat for his district here and I applaud him for that, but I fail to see a convincing reason why LB31 needs to advance when there are clear questions on constitutionality. As Senator Conrad mentioned, it's very

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 1, 2024
Rough Draft

hard to unpack all of these issues with just 5 minutes on the mic. I'm sure we could go back and forth about that for hours.

KELLY: One minute.

SLAMA: The data isn't conclusive. And for the record, I didn't decide to get involved in this filibuster until the question was called. So I didn't come into this thinking I would filibuster. I've got a newborn at home, so I'm trying to pick my battles. It was when the question was called, and we still had a lot of substantive debate left to be had on a very important issue, that I decided to get involved and unpack some of the larger problems at hand with LB31. Thank you, Mr. President.

KELLY: Thank you, Senator Slama. Senator Jacobson, you recognized to speak.

JACOBSON: Thank you, Mr. President.

KELLY: And this is your last time on the floor amendment.

JACOBSON: Oh, great. I'm sure there will be another one. So we'll, we'll all be able to come back and revisit this. I think we're all running out of 3 times. So, Senator Slama, I trust you've got another floor amendment ready to file? You got it up there. Great. All right, so we'll be back. Well, first, let me make it abundantly clear, I am incredibly glad that we have the Union Pacific Railroad here in Nebraska. And I'm also incredibly glad that we had the, the Burlington Northern that has tracks in Nebraska and, the pri-- primary owner in Nebraska, as well. I'm also going to tell you that as I talk to workers in my district, they will all applaud the pay-- the wages, the wage scale, and they're happy to work for an organization that it pays a quality wage with quality benefits. So I want to be clear. I'm not opposing these 2 companies. These 2 companies are great assets to Nebraska. They pay a lot of property taxes. They pay a lot of sales-- income taxes, in the case of the Union Pacific. And I'm glad they're here, incredibly glad they're here. They're very, very important to commerce. I get that. If you listen to my arguments and the reason for this bill, what I'm concerned about is public safety and the safety of the workers. That's my concern. That was my concern in my open. That was my concern every time I've been on the mic. I don't think I've been inconsistent there. Those are my concerns. I think the appropriate steps have to be taken to make certain that public safety is there. The statistics are pretty clear on the number of accidents

that are continuing to happen. That's pretty clear on the reasons for the derailments. There are safety concerns that are not being addressed. And because of that and until it is, we're going to have continued numbers of derailments. It's going to be part of the process. And we need to make sure that the public is, is protected when that happens. That's what this bill is about. That's what this bill has always been about. We can argue all day long about whether the bill would be enforceable or not, but 11 other states have passed it. Eleven other states have passed it, and we've heard what the results are in the Ninth Circuit. So we can read more information on what other states are doing or concerns elsewhere. I'm just looking at the fact that we're not number 1. OK. We would be number 12 if we passed this bill. Just saying. I think it's important to also note, I'd mentioned before when I was on the mic about what a conductor does. Well, here's some statistics from 2023, from the Burlington Northern Santa Fe, in terms of service interruptions, this would be system-wide for the Burlington, in 2023. The number of hot or warm journals, 1,476; air brake systems failing, 654; knuckle breaks-- knuckles are what connect the cars together, but I'm sen-- I'm sure Senator Lowe's grandson has told him that-- 605; switch--

KELLY: One minute.

JACOBSON: --switch failures, 1,111; the end-of-train failure are replaced, 452; handbrakes, 494; brake system, 359; air hose uncoupling or dragging, 995; sticking brakes, 228. There's 1 person on the train that can repair those. It's the conductor. Thank you.

KELLY: Thank you, Senator Jacobson. Senator Fredrickson has some guests in the north balcony, fourth graders and teachers from Prairie Lane and Paddock Road Elementaries in Omaha. Please stand and be recognized by your Nebraska Legislature. Senator Conrad, you're recognized to speak.

CONRAD: Thank you. And good morning, colleagues. There-- maybe I did not have my mic placement in the right, the right spot the first go-around, because I was getting some feedback that folks couldn't hear me on my first time on the mic on this. So, I, I think Senator Slama is 100% right. These are complex areas of law that highly-trained jurists and litigators spend a lifetime working through. And so, it's very challenging to cover the depth and complexity of preemption and the Commerce Clause and the Dormant Commerce Clause, and, of course, the Ninth Amendment and the Tenth Amendment, as well, for powers retained by the people and states'

rights, generally speaking. So I, I do think that perhaps we can come to, maybe, some sort of uneasy or easy agreement, perhaps, that we're, we're probably not going to be able to, to litigate the, the finer points of the legal issues, in regards to this measure, on the mic. And there are legitimate questions and legitimate findings on perhaps each side there. But that being said, I, I think if-- even if we can find that agreement, that should tell us a lot about what we need to know: That this is not clearly prohibited, this is not clearly unconstitutional or illegal, but in fact, there's a ton of gray area there that we have the space to navigate within, when it comes to advancing consumer protection, community protection, public safety, and workers' rights, health and safety, as well, as we typically do in a host of different areas, that leave space and that leave flexibility and that leave room in the interplay between our federal and state laws. So, I, I did just want to lift that in regards to that ongoing dialogue, which I think we, we agree upon. And by the way, I'm very grateful to have Senator Bosn and Senator Slama and other attorneys in the body who can help to work through these highly technical issues. Even if we don't have a meeting of the minds, I think it strengthens and heightens debate and makes for a better process and hopefully, a better result. The, the other thing that I wanted to lift up, 2 things really, was 1, there has been kind of a reoccurring theme amongst some of my friends who stand in opposition to LB31, about this should be an issue that-- that's settled at the bargaining table. OK. Let's unpack that a little bit here. Because again, in federal and state law, we consistently set minimum standards for what we believe to be sound public policy. So we can't just shrug our shoulders and say, well, we should just let them bargain over wages, for example. No, there's minimum standards in that regard. There's a minimum wage that applies, so that's a prohibition on 2 parties' ability to negotiate over wages. So that's, that's just 1 example of that, that it also comes into play in regards to other workers rights, health and safety issues. There is nothing new or different about this issue, about setting a minimum standard for safety--

KELLY: One minute.

CONRAD: --as we do and we have in other areas. And so, again, it's a complex area of labor law and contract law and employment law, but it's just not as simple to say that this should be bargained. That's, that's not exactly an accurate reflection of how our laws work in setting minimum standards in our public policy for workers' rights, health, safety and working conditions, or public safety issues. Finally, another theme that I've been hearing about is, well, let's

sit around and wait for federal action. Colleagues, I think we all know how mired our federal government is in dysfunction, and I think that those promises are illusory at best. We can and we should come together to ask our federal partners to make expedient action and to advance rail safety and worker safety and community safety, but we shouldn't abdicate our responsibility to do the same on the state level when we have the opportunity. I'll look forward to sending a joint letter to our congressional representatives with colleagues across the political spectrum who are calling out--

KELLY: That's your time.

CONRAD: --for that immediate action as well, and encourage them to bring the same vigor to their support for--.

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

CONRAD: --LB31. Thank you, Mr. President.

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

LOWE: Thank you, Lieutenant Governor. I'm so sad. Here we are talking about trains and, and the children leave the balcony. But maybe I saved them, or maybe they saved themselves from my reading a little story here. I stand, and I'm not in favor of LB31 and I'm not really sure about FA208, but this is a story by Watty Piper. Chug chug chug. Puff puff puff. The little train ran along the tracks. She was a happy little train. Her cars were full of good things for boys and girls. There were all kinds of toy animals, giraffes with long necks, teddy bears with no necks, even a baby elephant. There were all kinds of dolls, dolls with blue eyes and yellow hair, dolls with brown eyes and brown hair, and the funniest toy clown you ever saw. There were toy trucks, airplanes and boats. There were picture books, games, drums to play. The little train carried every kind of toy that boys or girls could want. But that was not all. The little train carried good things to eat, too: big, round apples, fat, red apples, long yellow bananas, fresh cold milk and lollipops to eat after dinner. The little train was taking all these good things to the other side of the mountain. How happy the boys and girls will be to see me, the little train said. They will, they will like the toys and the good food that I am bringing. But all at once, the train came to a stop. Must have not had a conductor on board, I guess, huh? She did not move at all. Oh, dear, said the little train. What can be the matter? She tried to start up

again. She tried and tried, but her wheels just, just would not turn. We can help, said the toy animals. The clown and the animals climbed out of their cars. They tried to push that little train, but she did not move. We can help, too, said the dolls. And they got out and they tried to push. Still, the little train did not move. The toys and dolls did not know what to do. Just then a shiny new engine came puffing down another track. Maybe that engine can help us, cried the clown. He began to wave a red flag. The shiny new engine slowed down. The dolls and toys called out to him. Our engine is not working, they said. Please pull our train over the mountain. If you do not, the boys and girls will not have any toys or good food. The shiny new engine was a bit friendly. You want me to pull you, he asked? That is not what I do. I carry people. They sit in cars on soft seats. They look out the windows. They eat in a nice dining car. They even sleep in a fine sleeping car. I pull the likes of you? I should say not. And off went the shiny new engine without another word. How sad all the toys and dolls felt. Then the toy clown called out, here comes another engine, a big, strong one. Maybe this engine will help. Again, the clown waved the flag. The big, strong engine came to a stop. The toys and dolls called out together. Please help us, big strong engine. Our train is not working. But you can pull us over the mountain. You must help us, or the boys and the girls will not have any toys to play with or good food to eat. But the big strong engine did not want to help. I do not pull toys, he said. I pull the cars full of heavy logs. I pull big trucks. I have no time for the likes of you. And away he puffed, the big, strong engine, without another word.

KELLY: One minute.

LOWE: Everybody thanks you. By this time, the little train was no longer happy. The dolls and toys were ready to cry. But the clown called out, look, look. Another engine is coming. A little blue engine. A very little one. Maybe this engine will help us. The little blue engine was a happy engine. She saw the clown waving his red flag and stopped at once. What's the matter, she asked, in a kind way. Oh, little blue engine, cried the dolls and toys. Will you pull us over the mountain? Our engine is not working. If you do not help, the boys and girls will not have-- no toys or good food. Just over the mountain. Please help us. Oh, my, said the little blue engine. I am not very big and I do not pull trains. I just work in the yards. I have never even been over the mountain. But we must get there before the children wake up, said the toys and the dolls. Please?

KELLY: That's your time, Senator Lowe.

LOWE: Thank you.

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

HOLDCROFT: Thank you, Mr. President.

KELLY: Your third time on the floor amendment.

HOLDCROFT: Thank you, Mr. President. So I'd like to wrap up this lesson on advancements in technology with the United States Navy moving from steam to gas turbine. So, my second ship was the USS Thach, FFG-43. It was a Perry-class frigate. So Perry was FFG-9. So that's the first of the class, so 43 minus 9, whatever that it comes up to, that's the, that's the ship we were. USS Thach, Thach-- John S. Thach was a World War II pilot. It was named after him. Anyway, I reported aboard as the commissioning engineer-- chief engineer. And this ship had gas turbines. No steam. So the way a gas turbine propulsion system works is we take essentially, a jet engine-- this one came off a DC-10-- and we take the exhaust essentially from, from the jet engine and we put it into a, a 6-stage power turbine. And that, that power turbine turns a main reduction gear and, and reduces the RPMs from the gas-- from the, from the gas gen--from the gas turbine from 20 to 1. So it's a 3,600 down to 180 maximum shaft RPM. And that's what-- and it's very, very simple. It-- as, as opposed to steam systems, a, a typical watch crew for a-- for the 1,200-pound steam was about 12 sailors had to be in the engineering spaces, man-- man-- manning the, the various valves. In a gas turbine, we're talking 4. And 2 of them are in an air-conditioned command and control session. The other 2 are just rovers that go around to the various engineering spaces. So this gas turbine, is the other big feature of it is you can change out a gas turbine in 96 hours. All you have to do is get a, get a, a crane alongside the pier. You put in a bunch of rails, you pull one out, you put another one in, you hook it all up and off, off you go. So it was tremendous advancement of technology. The other interesting thing about gas turbines is you start it about a minute before you get underway. It used to take up to 8 hours for a 1,200 pound steam plant to get up to pressure and ready to operate. The, the gas turbines is the last thing you light off before you pull in the lines and get underway. But once you start it, it starts turning the shaft. There's no way to stop it, and it only turns it in one direction. So that causes a problem. I mean, so what we did was they came up with what's called a controllable pitch propeller, and the blades on the propeller can be rotated forward and back. They

start off in a neutral kind of position. You can do up to 12 knots just by changing the pitch on the propeller. And the maximum speed on the Perry-- on the Perry-class frigate is about, about 25 knots, about 30-- 30-35 mph. So, so the big difference and I'm trying to wrap it up here, was in manpower. The, the Knox-class frigate, 1,200 pound steam, had a crew of about 350, and 80 of those were the engineering department, so about a quarter of the crew you needed to do engineering. Fast forward to the, the Perry-class frigate, gas turbine-powered, the crew was 185, and the engineering department was 40, so half as many people as you needed for, for the steam-- for the steam. And, and it was a much more pleasant experience, a lot of automation, a lot of electronic technicians you need for that kind of plant, many of the spaces were air-conditioned, and it was a much better performing. And today, that's what we're using.

KELLY: One minute.

HOLDCROFT: Thank you, Mr. President. That's what we're using. On your destroyers, you have those that have 2, 2 propellers, 2 shafts, you're going to have 4 LM2500 gas turbine engines, 2 per shaft. And that's the way it is on the Arleigh Burke-class destroyer. And we talked about the Arleigh Burke-class destroyer being named after Petty Officer French this morning. They still use pretty much the same engineering plant that I had on my [INAUDIBLE] on my destroyer, which was-- had 4 gas turbines and 2 shafts, and a crew of about 350. So, that's it. The-- one, one other thing I'll wrap up with is even though you have advances in technology, there still has to be advances in safety, advances in training, and advances in maintenance. And the Navy does that extremely well, and we drill on it all the time. So--

KELLY: That's your time, Senator.

HOLDCROFT: Thank you, Mr. President.

KELLY: Thank you, Senator Holdcroft. Senator Linehan, you're recognized to speak, and this is your final time on FA208.

LINEHAN: Thank you, Mr. President. I'm sorry. I wasn't paying enough attention. It says, to the East Palestine, Ohio train derailment. This is an article dated late January, 2024. America's freight railroads acted quickly and decisively to pursue voluntary actions to help prevent similar accidents from occurring in the future. Over the past 12 months, the Class I railroads have kept and in some cases exceeded their promises, clearly demonstrating the industry's commitment to

lead, innovate, and implement tangible safety solutions without waiting for mandates from Congress or regulators. Freight rail is and remains safe, responsible way to move hazardous materials Americans require. While there's still more work to do, the industry continues to prioritize ongoing improvements to safeguard our people and our communities. Railroads and Congress. And I think it's-- somebody asked me a question. It might have been Senator Hansen. Because when I spoke before, I talked about the railroad retirement is separate from Social Security. We have to remember the railroads were very much a government enterprise, and they have remained very closely entangled with the federal government. Because, as Senator Hansen, I'm sure it was Senator Hansen, said, their union is under a little bit different kind of set-- they can't walk off the job like other unions. Because what would that mean if they walked off the jobs? It would mean food wouldn't get to grocery stores. Crops, corn, soybeans wouldn't get transferred to processing. The economy would come to a halt. So they have always been and will continue to be very much regulated by the federal government, because the whole nation depends on our railroad system. So for the reasons I've said before, for us to interject ourselves into a process-- this is handled at the federal level, has been handled at the federal level for 100-- 150 years. And my math might be off there. Senator Clements, you can correct me as you do when I'm off. All of a sudden, we're going to interject state legislation. I mean, they're in 50 states. Well, I, I assume they're in all 50 states. They were, at least at one time. They can't, they can't be regulated by 50 different states. It would not work. So I am still opposed to this bill and will remain so. Thank you, Mr. President.

KELLY: Thank you, Senator Linehan. Senator Kauth, you're recognized to speak. This is your third and final opportunity on FA208.

KAUTH: Thank you, Mr. President. I'd like to yield my time to Senator Albrecht.

KELLY: Senator Albrecht, you have 4 minutes and 40 seconds.

ALBRECHT: 4 minutes and 40 seconds. OK. Again, I stand in opposition to LB31. It's hard to just keep talking about the same thing, but it's pretty much that we, we just don't agree, many of us, that it's our responsibility to stand in front of the railroads and what they need to do with their employees. But more importantly, if the federal government is the one that takes that stand, then we need to think about whether we should be involved or not. And while I am happy that

Senator Jacobson has agreed to wait until the decision comes down in March, we'll still be here, and-- but at the same time, we're going to pause this just so that we can take care of business that way or hopefully, the majority of us that are on the floor will do that. But I just do want to talk a little bit more about railroads and, and being in the ag business, it's important for us to be able to move, to move the products across our country. And, and any type of a hiccup or a slowdown or something, you know, whether it's a, a catastrophe of some sort, we have to stand behind these folks and we have to have a working relationship with them. And in my eyes, sitting on Transportation for the time that I did, this came up all the time. And it was really hard for me to understand how an employee could be coming before us, asking us to help them, basically negotiate for them. And I just don't believe that that's our place. I'm for limited government. I don't want to see us try to tell any business, insurance, hospitals, you know, I mean, we, we just don't get involved that way, and, and getting deep in the, in the weeds with what they're doing with their companies. So, again, I just, I just want to just talk a little bit about what these rails do. You know, we live in a global marketplace. Nebraska exports approximately 400 million tons of freight. Almost all farm and food products go by rail. Nebraska railroads need to be able to safely innovate and keep shipping costs down so that Nebraska producers can remain competitive. Again, I think we have to look at the overall global picture, that they play an intricate role in taking care of those things. So with that, I'll yield my time back to you because I think I'm up again in a few minutes. Thank you, sir.

KELLY: Thank you, Senator Albrecht. Senator Lowe, you're recognized to speak and this is your third opportunity on this floor amendment.

LOWE: Thank you, Lieutenant Governor. We were just getting to the exciting part of the book, and I know they're waiting to hear the end. Everybody is sitting on the edge of their seats. So I finished off with-- but we must get there before the children wake up, said the toys and dolls. Please? The little blue engine looked at the dolls and the toys. She could see that they were not happy. She thought about the children on the other side of the mountain, without toys or good food. They would not be happy either. The little blue engine pulled up close, took hold of the little train, and the toys and dolls climbed, climbed back into the cars. At last, the little blue engine said, I think I can. I think everybody knows these words. I think I can, I think I can, I think I can climb up the mountain, I think I can, I think I can. Then the little blue engine began to pull. She tugged and

she pulled. She pulled and she tugged. Puff, puff, chug, chug, went the little engine. I think I can, I think I can. I, I think this is Senator Jacobson's mantra today. He wants to get this bill passed. I think I can. Slowly said, and slowly, slowly, the train started to move. The dolls and the toys began to smile and clap. Puff, puff, chug, chug. Up the mountain went the little blue engine. And all the time she kept saying, I think I can, I think I can. Up, up, up. The little engine climbed and climbed. At last, she reached the top of the mountain. Down below lay the city. Hurray, hurray, cried the dolls and animals. The boys and girls will be so happy, said the toy clown, all because you helped us, little blue engine. The little blue engine just smiled, but she puffed down the mountain. The little blue engine seemed to say, I thought I could. I thought I could. I thought I could. I thought I could. Now, we'll get back to the things that make our eyes go crosswise. Moreover, the crew size reasonably burdens and unreasonably interferes with rail transportation. Rail-- railroads are large network-- works that produce efficiencies through operations across the state lines. A carload of freight can move across the country without state-based implementations, benefiting both the shipper and the public. Preventing Nebraska impose-- to impose a crew size requirement that not only-- mandated by the state and neighboring states, could reduce the efficiencies and burden interstate commerce. Trains moving between states with different crew sizes requirements would need to stop or add crews to remove crew members, causing railroads to incur additional costs for the rest of the facilities and the crew transportation, and ultimately, reducing efficiencies for shippers and public. It takes a while to stop these trains. It takes a long time to get them moving again. And they just don't stop for a second or 2 while somebody climbs on. And these burdens on interstate commerce are entire-- entirely unreasonable. Under the proposed Nebraska law, it does not matter whether operating with a single crew member is just as safe as operating with multiple crew members, whether the railroad operates with a single crew member in adjacent states, or even whether the railroad has collective bargaining agreement permitting a single person operation. The proposed law thus imposes a balkanized and unreasonably burdensome system of transportation regulations that ICCTA was designed to prevent. Although states have repeated-- repeatedly attempted to justify minimum crew size laws as connected to safety, those arguments have been consistently rejected, with courts concluding--

KELLY: One minute.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 1, 2024
Rough Draft

LOWE: Thank you, Lieutenant Governor-- with courts concluding that such laws are connected to labor and economic issues, not safety. And I think that's what we're saying here today, is this is a labor issue between management and the unions. It should not be here before the Legislature. And I wish I had another story to read you, but I know I don't have time. Thank goodness. Thank you, Lieutenant Governor.

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

WAYNE: Thank you, Mr. President. I just want to confirm that the Golden Spike was 1869, which is 155 years. So I believe Senator Lou Ann was-- Linehan was correct. And, Merv, do you want time on the mic? Riepe-- Senator Riepe, do you want time on the mic? I will yield the remaining of my time to Senator Riepe.

KELLY: Thank you, Senator Wayne. Senator Riepe, you have 4 minutes, 30 seconds.

RIEPE: Thank you, Mr. President. He's calling on me because he thought I couldn't talk. But surprise, surprise. I'm back. I have been a resident of Omaha for many years. I have followed the railroad. And I am absolutely a believer that this is a management/labor issue and it's not something that government-- state government should get engaged in. I think that's particularly focused because these railroads do not run from Omaha to Scottsbluff and then turn around and run back. And so, it is an interstate control and should be. And, I, I thank Senator Wayne for the time. And with that, I will yield.

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

ALBRECHT: Thank you, Mr. President. I guess I'll go back again to some of my comments from yesterday. We were talking about, obviously, the 2-man crew for just the larger railroads, but we don't want to leave out the Amtraks. I think it's important for people to understand that they do only operate with 1 person in the cab. And yes, they are out there for over 6 hours at times, maybe longer. If you really wanted to be concerned, obviously, about the safety that they're trying to talk about in this issue, we should require that all railroads do the same. Obviously, they have folks that would, would object to that because things obviously are, are not such an issue with the shorter railroads. But again, that is a federal issue that needs to be discussed on a federal level and not state by state or hodgepodged

throughout the country. Are there railroads in Nebraska operating with 1 person on a train today? Was the PSC even aware that there were short lines operating with only 1 in a cab in Nebraska? Those are some questions that need to be considered. And yes, there are at least 3 short lines, they say, that operate only with 1 person on the train, and in Nebraska, Central, Genesee & Wyoming, and NKC. This is why the, the AM2019 that was passed yesterday exempts the Class III railroads. If-- is there a reason that they needed to be exempt, or should they have been included in that particular bill, LB31? So Amtrak is operating with 1 in the cab, at least 3 Class III railroads are operating with 1 in the cab, and the railroads have a contract with the unions requiring 2 people on the train, but we need to pass this bill to make Nebraska safer. It's my understanding that they do already have a contract for the next 2 years for 2 men in a crew, so I don't think that this is something that we need to be addressing on the floor of the Nebraska State Legislature. And I'll yield my time back to the president. Thank you.

KELLY: Thank you, Senator Albrecht. Seeing no one else in the queue, Senator Slama, you're recognized to close on FA208.

SLAMA: Thank you, Mr. President. And good morning, again, colleagues. I promise this is the last time you're going to hear from me this morning. I would like to thank Senator Lowe for his high energy reading of the book about trains. I'm actually going to have to read that to my kid now. He really should narrate the go-to-sleep books for kids, just because his voice is that soothing. Like, honestly. And we've got some pages nodding in agreement. Like, it's a missed career opportunity if he doesn't start doing voice-overs for those kids books. But I, I would encourage everyone to vote no-- hold on. Would the Speaker yield to a question?

KELLY: Speaker Arch, would you yield to a question?

ARCH: Yes, I will.

SLAMA: Thank you, Mr. Speaker. And thank you for your patience this morning. Do I need to take this to a vote before we go to lunch or can we go to lunch if I withdraw it?

ARCH: I think that's either way.

SLAMA: OK. Thank you, Mr. Speaker. I withdraw FA208. 209?

KELLY: Without objection, it is withdrawn.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 1, 2024
Rough Draft

SLAMA: Thank you.

KELLY: Mr. Clerk, for items.

CLERK: Thank you, Mr. President. A few items. Your Committee on Banking, Commerce and Insurance, chaired by Senator Slama, reports LB854, LB989, LB992 and LB829 to General File, LB829 having Committee amendments. Amendments to be printed, from Senator Ibach to LB999, and Senator Holdcroft to LB1018. Additionally, Senator DeBoer to LB1167, Senator Slama to LB31, Senator Brandt to LB61, Senator Jacobson LB31. Additionally, Mr. President, notice of committee hearing from the Judiciary Committee. New LR, LR291, introduced by Senator Holdcroft. That will be read and laid over. Report-- your Committee on Enrollment reports LB52, LB52A, LB94, LB279, 640-- LB461 and LB628 as correctly engrossed and placed on Final Reading. Name adds: Senator Conrad to LB871, Senator Bostar, LB876, Senator Sanders, LB1072, and Senator Slama, LR282. Notice that the Government Committee will hold an Executive Session today in room 1507, immediately following their hearing. Government Exec Session, Thursday, February 1, immediately following the hearing in 1507. Finally, Mr. President, a priority motion. Senator Blood would move to adjourn the body until Friday, February 2, 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.