

**MINUTES OF THE  
SENATE COMMITTEE ON GROWTH AND INFRASTRUCTURE**

**Eighty-second Session  
May 3, 2023**

The Senate Committee on Growth and Infrastructure was called to order by Chair Dallas Harris at 3:32 p.m. on Wednesday, May 3, 2023, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Dallas Harris, Chair  
Senator Pat Spearman, Vice Chair  
Senator Julie Pazina  
Senator Scott Hammond  
Senator Ira Hansen

**GUEST LEGISLATORS PRESENT:**

Assemblyman Max Carter, Assembly District No. 12

**STAFF MEMBERS PRESENT:**

Kristin Rossiter, Policy Analyst  
Jessica Dummer, Counsel  
Vicky Lind, Committee Secretary

**OTHERS PRESENT:**

Randy Soltero, Soltero Strategies  
Jason Doering, International Association of Sheet Metal, Air, Rail and  
Transportation Workers  
Gabe Christenson, International Association of Sheet Metal, Air, Rail and  
Transportation Workers  
Matthew B. Parker, Brotherhood of Locomotive Engineers and Trainmen  
Fran Almarez, Brotherhood of Locomotive Engineers and Trainmen  
Susie Martinez, Nevada State AFL-CIO

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Tom Dunn, Professional Firefighters of Nevada  
Marc Ellis, Communications Workers of America Local 9413  
Paul Catha, Culinary Workers Union Local 226  
John Abel, Director, Las Vegas Police Protective Association  
Annette Magnus, Battle Born Progress  
Rick McCann, Nevada Association of Public Safety Officers  
Troyce Krumme, Las Vegas Metro Police Managers and Supervisors Association  
Marlene Lockard, Service Employees International Union 1107  
James Becker  
Emidio Gonzalez  
Ethan Christenson  
Steven Magee  
Robert Sumlin, International Association of Machinists and Aerospace Workers  
Local 711  
Alfonso Lopez, International Association of Sheet Metal, Air, Rail and  
Transportation Workers Local 88  
Liz Sorensen, President, Nevada State AFL-CIO  
Edward Gooddrich, International Alliance of Theatrical Stage Employees  
Local 363  
Janet Carter, Sierra Club  
Andrew Regal  
Dionne Klug  
Joe Guild  
Peggy Ygbuhay, Union Pacific Railroad  
Connie Roseberry, Assistant Vice President of Safety; Chief Safety Officer,  
Union Pacific Railroad  
Paul Enos, CEO, Nevada Trucking Association  
Paul Moradkhan, Vegas Chamber  
Shelly Capurro, Burlington Northern Santa Fe Railway  
Theresa Benitez-Thompson, Chief of Staff, Office of the Attorney General

CHAIR HARRIS:

We will open this hearing with Assembly Bill (A.B.) 456.

**ASSEMBLY BILL 456 (2nd Reprint)**: Revises provisions relating to railroads.  
(BDR 58-974)

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ASSEMBLYMAN MAX CARTER (Assembly District No. 12):

Assembly Bill 456 pertains to train safety. My grandfather came to Las Vegas in 1942 because of the Union Pacific Railroad (UPR). I grew up looking at the old UPR timetables and being fascinated by his obsession with watches. My grandfather had worked his way up through the ranks. I was concerned to hear some of the safety issues they had back in the 1940s and 1950s are still issues today. There is a lot of work to be done when it comes to train safety.

We have seen so much in the news about train lengths and West Palestine, Ohio, last week. A train in Wisconsin dumped a bunch of cars into the Mississippi River.

This bill is about hotboxes, devices put on the rails that sense hot bearings, hot wheels and count the number of axles and metrics on the train. The UPR has been good about installing them in Nevada. They are ahead of the curve. The problem is they do not communicate with the operator of the train anymore. They did originally. They are designed to provide real-time communication with the man in the cab of the train reporting the number of cars or an issue with any of the devices or any pieces on the train.

It is also about trains blocking grade-level crossings with emergency vehicles and making things inaccessible. Those of us who live in the downtown area of Las Vegas have been trapped at West Oakey Boulevard behind Western Avenue where the train will sit forever. This intends to reduce that for emergency vehicles.

Finally, a train length provision brings it down to a reasonable amount. The train lengths have gotten out of control. Five miles is not uncommon in the West. On the flats in Oklahoma and Kansas, you see them up to seven miles long. You are going to hear testimony from railroad representatives talking about how they self-regulate and how this should be done with the federal government. It is questionable whether that preemption is valid or not. We need to do something about this issue, and it is time for Nevada to possibly be the first in the Nation to say no more. We are tired of these derailments. We are tired of our communities being put in danger.

RANDY SOLTERO (Soltero Strategies):

I am here to walk you through A.B. 456.

Section 1.18, subsection 1 talks about the wayside detector communication system. This includes the hotbox detector, hot wheel detector, dragging equipment detector and an audible alarm that operates in accordance with subsection 2.

We started talking about this bill and bringing this to the Legislature back in the summer. Once we started this Legislative Session, you heard about what happened in East Palestine, Ohio, where there was a derailment. As we talked to the people from East Palestine, they will tell you their property is worthless now, their children are sick, people are sick, and they are having to leave. It was an unfortunate accident; this bill has parts we are trying to get passed in Nevada that heed the contributing factors to the East Palestine accident.

Section 1.26 talks about railroad crossings and making them open so emergency vehicles or traffic can get through when you are in rural or inner-city parts of the State.

Section 1.28, subsection 1 outlaws freight trains exceeding 7,500 feet. Several studies are being conducted on what is a safe length for a train, including Freight Train Length ([Exhibit C](#)), Affects of Very Long Trains from the Perspective of Train Dispatchers ([Exhibit D](#)) and Perspective on Very Long Train Operations ([Exhibit E](#)).

When you relate to trucks going down grades and having problems braking, those brakes start to get hot, smoke or catch fire. Imagine it happening on a train with tens of thousands of tons of weight barreling down. When the train began to derail in East Palestine, they could not stop it. It kept going—all the time dumping chemicals.

JASON DOERING (International Association of Sheet Metal, Air, Rail and Transportation Workers):

I will read my testimony ([Exhibit F](#)) in support of A.B. 456. I have included a presentation ([Exhibit G](#)) titled A Brief on the Effects of Long Trains on Commerce, the Infrastructure, the Environment, and the Public by Jared Cassity; a letter ([Exhibit H](#)) from Lawrence Mann; and a copy of the statement on the Ninth Court Decision ([Exhibit I](#)). I also have a video ([Exhibit J](#)) to present to the Committee and U.S. Court of Appeals for the Ninth Circuit No. 19-71787 decision ([Exhibit K](#)).

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GABE CHRISTENSON (International Association of Sheet Metal, Air, Rail and Transportation Workers):

I will read my written testimony ([Exhibit L](#)) on A.B. 456.

MATTHEW B. PARKER (Brotherhood of Locomotive Engineers and Trainmen):

I have submitted written testimony ([Exhibit M](#)) in support of A.B. 456. Everybody has heard of the East Palestine incident that has raised public consciousness about railroad safety and railroad accidents. Train defect detector standards do not exist right now.

I have participated in meetings with personnel from the Federal Railroad Administration (FRA) where we have expressed concerns over the fact that the railroad several years ago took away the data we used to get as operators of trains from those detectors. The answer from the FRA is we agree with you, but we have no regulations we can enforce. All we can do is suggest the railroads put that stuff back.

Assembly Bill 456 gives you the opportunity to fix the problem and enhance the safety associated with these detectors given the data provided to us so we can conduct safer train operations.

Regarding train length, the FRA issued Safety Advisories 2023-01, 2023-02 and 2023-03 ([Exhibit N](#), [Exhibit O](#) and [Exhibit P](#)), respectively, to the railroads regarding long trains and their operation. They are looking at this. It has been six to seven years since the railroads started pursuing these long trains. In Nevada, trains are upward to 15,000 feet. They are seeing a pattern with some of these accidents related to the length and weight of the train and the way cars are arranged. The FRA told the carriers they want them to look at this and make some adjustments to things they are doing because it has identified this as a primary or secondary cause in several derailments.

The safety advisories are helpful, affirming the position we have had for a long time. There are definite safety concerns associated with the operation of trains of such length, however, the FRA stopped short of taking any kind of firm action to require the railroads to do something about it. Assembly Bill 456 would establish a 7,500-foot cap on the length of trains in Nevada, which would enhance safety.

What the FRA is looking at has to do with weight and forces in the train that go along with all its cars. By limiting the length, we reduce the forces in the train and eliminate some of these hazards of derailments.

Until about six or seven years ago, we did not run trains longer than 7,500 feet. That was the limit. We did not have the problems we see now with derailments and mechanical failures associated with train length and weight.

SENATOR PAZINA:

If Nevada were to adopt a cap of 7,500 feet on train length, how would this affect trains coming in from other states? Would this require railroads to either increase or decrease the size of the trains entering the State?

MR. CHRISTENSON:

The operating practices the railroads have adopted basically to say every train that touches the State sets out cars and picks up cars, so there would not be any delay to transportation. They are already doing that now. They combine two grain trains together in the Midwest and, once they hit Portola, California, they are broken into two separate trains again because they are not allowed to run trains of that size down the Feather River Canyon.

MR. PARKER:

These train lengths are something new. It has only been happening the last couple of years. These trains drop off and pick up cars when they come into the terminals in the State. Having worked these jobs for an extended period, I can tell you when these trains were shorter and we were handling fewer cars, we could bring a train into the terminal at Sparks and drop cars off that train, reposition locomotives in the train, pick up cars and have the train ready to go out of the terminal in 45 minutes. With the excessive amount of cars we handle now, it takes upward to three hours to do the same job. The reason is because you cannot move as fast.

Another thing addressed in the FRA safety advisories was the training. The railroads have put these long trains out there and not provided any training as to how to run them. At the beginning, there was a lot of trial and error where we saw derailments because locomotive engineers had used certain techniques for years in handling these. Now they are handling so much more weight that the techniques successful for years are causing derailments. They had to learn this through the school of hard knocks.

SENATOR SPEARMAN:

Talk to me about the training. Is there a difference in the training between what the length of the trains used to be and what they are now?

MR. DOERING:

I went through engineer training when a long train was 7,500 feet. Working as an engineer now, I have never been trained how to operate these long and heavy trains.

SENATOR SPEARMAN:

Is there a significant difference? What is the difference, and how does that relate to safety?

MR. DOERING:

When we hired out, most of our trains were rolling down the rails with locomotives on the headend of the train. You would only see a train with power on the headend. They have gotten so big and so long now that power is distributed throughout the train. You may see locomotives on the headend, a couple sets of power through the middle of the train and then some on the rear. We are constantly having to monitor what those locomotives are doing in conjunction with our headend. When we are pulling on the headend or giving it more gas, we could be braking somewhere else in the train. We have never been taught how to do that per se. We can read our operating rules on how to do this, but being taught by any of these carriers does not happen.

SENATOR SPEARMAN:

Something happened in April. Can you give me a little bit more on that, please?

MR. PARKER:

In April, the FRA came out with safety advisories regarding the length of trains. At first, if looked at six specific derailments where the weight, length of the train and arrangement of the cars were determined as contributing factors to these derailments. The advisories put the industry on notice to look at practices because, obviously, we are having accidents because of this. Some adjustments need to be made. Then another advisory looked additionally at the handling of the trains, and training was one of the issues. The FRA said you cannot put a locomotive engineer trained to run a 6,000-foot train on a 12,000-foot train and expect that the person to know what to do. They must have some training. The railroad did not provide us with any training on how to run these. I just show up

one day and now, instead of being 6,000 feet, my train is 12,000 feet; I had to take the knowledge I have, apply that and figure it out on my own.

SENATOR HAMMOND:

There is a lot in this bill. We do not want to see these occurrences happen repeatedly. I have heard you use the term "long train." I am going to that part of the bill. You said there are other states looking at the same thing, getting to the issue of public safety and ensuring we minimize these kinds of incidents from happening in the future. You mentioned Ohio, but then you stopped short of naming any other states. How many others? Are they talking about putting in the same language?

One component is the length of the train. The other is the research data you are collecting. The length of the train is something that each one of these states is contemplating.

MR. DOERING:

Ohio passed regulation dealing with the wayside detectors. In its bill, Ohio mirrored the two-person crew legislation we passed in 2019. As far as the number of states proposing train length legislation, we are up to 14. A few are stalled in committee, and others may be in the lower house, but they are doing this now.

SENATOR HAMMOND:

You said a few years ago, the definition of a long train would have been 7,500 feet, then you said 12,000 and later you said 15,000 feet. I do not know the definition for a long train. Are the 14 other states all contemplating a length of 7,500 or different amounts in each one of those?

MR. DOERING:

The only other state contemplating 7,500 feet is Washington. The reason we did this is looking at our infrastructure, the length of the sidings we have and, most importantly, taking into consideration the terrain. These train lengths are large in correlation with the weight of the train.

Nevada may not seem like it, but we have some of the most treacherous terrain in the Country where our trains traverse. We have Donner Pass, and in the southern part of the State, we go through Rainbow Canyon near Caliente and

south of town through the Mojave Preserve on Cima Hill. Each state is looking at their different terrains and the infrastructure.

SENATOR HAMMOND:

Washington and Nevada are contemplating a maximum length of 7,500 feet. I am curious about what the other states are contemplating for train lengths.

MR. DOERING:

The other states are running 8,500 feet.

MR. CHRISTENSON:

The FRA and national Surface Transportation Board put out statements saying train length would be better taken care of at a state level because a blanket train length requirement for every state may not work. Whereas our terrain is mountainous and we have a lot of curves, the Midwest is flat, so a longer train length maybe all right.

SENATOR HANSEN:

Is there any railroad data to determine the number of derailments?

MR. DOERING:

I will provide you the data.

SENATOR HANSEN:

I am wondering if this is below average or now expanded significantly over what it was in the 1970s?

MR. CHRISTENSON:

The trouble with finding out about derailments is the railroad self-reports those. If it is not a certain dollar amount, they do not report derailments to the FRA and the powers that be. A derailment yesterday in Fernley is probably not going to get reported. There was a derailment a week or two ago in Sparks. There are constant derailments.

A few major incidents occurred this year. A major one was January 20, 2023, in Winnemucca. I just went by those cars that derailed yesterday morning on my way back from Elko. They are still there. A February 20, 2023, incident was not a derailment, but it happened because of the length of a train. A train in Carlin broke into three pieces, and it was a key or a high-hazard train. Most of

the freight on that train was hazardous material. It broke in three spots right next to the Humboldt River in Carlin.

We had a March 7, 2023, incident that mirrored what happened in East Palestine. A train going from Elko to Portola, California, went over two wayside detectors, the hot box detectors we have in our bill. The crew was never alerted to an increase in temperature on the bearings. A bearing that increases in temperature is not something that happens immediately. Five miles after the second detector, a bearing broke from the wheel, shot off the train and started a brush fire in multiple locations, set somebody's front yard on fire and subsequently derailed multiple cars. It was not worse because this was a unit train, where all cars carry the same freight. In that regard, we were lucky because there are less in-train forces when that happens. Rather than stacking up, the train sat down on the ground and derailed more gently than if it was mixed freight.

SENATOR HANSEN:

Over time, there have always been mechanical problems. Is it the quantity that has gone up on the trains you mentioned? Were they 15,000 footers or some of them 7,500? Is there data to show the longer train consistently has issues in comparison to past decades? Can you provide that information for me soon?

FRAN ALMAREZ (Brotherhood of Locomotive Engineers and Trainmen):

Does Nevada have the authority to regulate train links? In 49 USC 20106 a state is granted the right to:

adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation... or Secretary of Homeland Security..., prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security.

Nevada is well within its rights to impose regulation on a train link, but should train link standards be set by the U.S. Department of Transportation (DOT) or the FRA?

In 2019, the U.S. Government Accountability Office released a study acknowledging the problem, but we are without a solution. Keith Washington, Deputy Assistant Secretary of DOT, concluded a one-size-fits-all approach is not the best solution. State and local governments are better positioned to address the unique road and emergency service characteristics in a particular state. If meaningful action is to be taken to address standards in the name of public safety, it will need to come from the state level, and the DOT has stated as much. Nevada is a large unique state served nearly exclusively by a single railroad monopoly. It would be a dereliction of duty to not set reasonable standards on a company so willing to experiment with the safety of Nevada residents.

SUSIE MARTINEZ (Nevada State AFL-CIO):

We are in support of A.B. 456. I have been watching the news and asking how does this keep happening? Why is nobody doing anything about it?

TOM DUNN (Professional Firefighters of Nevada):

Professional Firefighters of Nevada is in support of A.B. 456. Since I last testified on a railroad safety bill in 2019, there have been two large train derailments in Nevada. One in June 2019 outside of Wells and the second in July 2019 outside of Caliente. In 2022, there were more than 1,000 train derailments, averaging three per day. In recent months, train derailments have become a national focus after East Palestine.

A similar derailment could have catastrophic consequences in almost any railroad town in Nevada to include Las Vegas, Verdi, Reno, Sparks and other towns along the I-80 corridor to Wendover. As plans are being implemented to create an inland port of entry in Fernley, northern Nevada will see an exponential increase in rail traffic as the facility is placed into operation.

This is a public safety issue due to the increasing length and weight being transported. In Reno, we have had multiple people struck by trains over the past two years. Regardless of its speed, a train can block multiple crossings prior to stopping, creating public safety delays due to emergency personnel having to reroute or dispatch additional resources to access a scene safely or for requested service. Train derailments could overwhelm both public safety and health resources, especially in smaller communities.

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It is time and resource-consuming to attempt to mitigate the hazmat and environmental impacts of a derailment. A derailment can potentially lead to a wildlife component in most of our counties, which would require the response of our federal cooperators. It is beyond time for this issue to be addressed. Nevada cannot wait any longer for the federal government to act.

MARC ELLIS (Communications Workers of America Local 9413):

We support this bill. Often the utility pole lines follow the rail easements. My members are either climbing the pole or up on bucket trucks on those poles. If the train tips, my members have nowhere to go.

PAUL CATHA (Culinary Workers Union Local 226):

I will ditto the other testifiers.

JOHN ABEL (Director, Las Vegas Police Protective Association):

I would say we support this bill.

ANNETTE MAGNUS (Battle Born Progress):

We are here today in support of A.B. 456. Installation of equipment and intent toward making our railways safer for the engineers and public should be supported. If the recent derailments could have been prevented by proactive measures, it would be worth any time and effort. Stopping and splitting trains to allow emergency vehicles through makes sense, especially when we are talking about trains that can be over a mile long. These types of technologies are proving to reduce train accidents. Our public radio station, KNPR, recently reported the rate of train accidents has decreased 44 percent since 2000. Because of technology invested, the Country averages three derailments per day, but one bad derailment like in Ohio can have a catastrophic consequence.

My husband is a safety professional and has worked with trains in his workplaces. As I prepared for this testimony today, he told me, from his experience, those railcars are in terrible condition which puts any worker, whether rail or otherwise, at risk. If this pulls one car off the track that saves lives, it is worth it.

RICK McCANN (Nevada Association of Public Safety Officers):

You have in front of you a DOT, Federal Railroad Administration Safety Advisory 2023-03, [Exhibit P](#), which was submitted for publication six days ago. Page 11 talks about blocked public highway-rail grade crossings and the problems to law

enforcement, fire and EMTs getting where they must go when they have to sit for more than 25 football fields to go by at less than 10 miles per hour. That problem affects public safety.

TROYCE KRUMME (Las Vegas Metro Police Managers and Supervisors Association):

We are testifying in support of this bill for several of the reasons already mentioned.

MARLENE LOCKARD (Service Employees International Union 1107):

We support this measure for safety reasons for our communities. The safer our rail and trains can be made to ensure the public safety, especially in populous areas, the better. A matter of minutes can have the train end up in the desert or the middle of Las Vegas.

JAMES BECKER:

I have been a railroad conductor in Sparks for almost 20 years. A couple examples of incidents that occurred in the last month would have been prevented if this bill was in effect: on April 27, 2023, in Carlin all the crossings were blocked for multiple hours during the midday; on April 28, 2023, in Elko the medical examiner was unable to access a body for three hours until I moved the train, opening the only crossing to grant him access; and on April 6, 2023, in Winnemucca, a wheel bearing burnt off exactly as it did in East Palestine. This train was made up of loads of coal when its bearing failed, and it sparked multiple fires that the Winnemucca Volunteer Fire Department struggled to access due to blocked crossings. Fortunately, this derailment occurred in the middle of town, not seven miles later at the cyanide plant. The train crew was not given any advanced warning to the lack of wayside detectors.

If this bill was law, these derailments would have been prevented. I urge you to support A.B. 456. A 3-mile-long train pulling into a yard at 10 miles an hour will block a crossing for 18 minutes. This bill will reduce that blockage to nine minutes.

EMIDIO GONZALEZ:

I have been a locomotive engineer and a teamster for 24 years. I urge the committee to support A.B. 456 to help keep our Community safe and allow the first responders no delay in responding to life-or-death emergencies because of blocked crossings due to train lines.

We block main road crossings with trains carrying hazardous materials, making it impossible for first responders to assist in life-or-death situations. I have watched as an ambulance with its lights flashing was not be able to go through crossings because the train I was operating was too long to clear the path. I have completely blocked one side of the city in Lovelock, Battle Mountain and Carlin due to train length.

ETHAN CHRISTENSON:

I have been employed with the railroad for nearly 13 years. I am the union representative for switchmen in Sparks. I have worked as a switchman for most of my career. I support A.B. 456.

As a switchman, one of our responsibilities is working with overlength trains, meaning the three-man switch crew performs tasks such as adding railcars for delivery to other train stations and removing railcars scheduled for delivery to various industries in northern Nevada. The risk involved with performing these work events with excessive train lengths is unnecessary and completely preventable by this bill. Certain railroad cars have not been engineered for movements within these excessive trains. These cars move in ways that create a risk for incidents when they are moved in directions not designed for extreme weights and forces being applied.

STEVEN MAGEE:

I have been with a railroad for over two years. I was involved in the catastrophic derailment in the Sparks yard just over a year ago. This was directly related to the excess train length. Similar incidents will be prevented in the future if A.B. 456 is passed.

ROBERT SUMLIN (International Association of Machinists and Aerospace Workers Local 711):

We urge the Committee to support this bill. May 5th is the birthdate of the International Association of Machinists and Aerospace Workers, which started off as a railroad union.

ALFONSO LOPEZ (International Association of Sheet Metal, Air, Rail and Transportation Workers Local 88):

We urge your support for this bill for the city and Legislature to be proactive instead of reactive and not waiting for another Palestine incident.

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LIZ SORENSEN (President, Nevada State AFL-CIO):  
Nevada State AFL-CIO is in support of A.B. 456 and urges this Committee to support the bill.

EDWARD GOODDRICH (International Alliance of Theatrical Stage Employees  
Local 363):

We are in support of A.B. 456 and strongly urge the Committee to pass this legislation. Trains from 1.6 miles to 3.21 miles long—it is not just a safety issue—is frustration for any person who gets stuck waiting for those trains.

JANET CARTER (Sierra Club):

I am speaking today on behalf of the Toiyabe Chapter of the Sierra Club, and we support A.B. 456 for all the reasons mentioned. In addition to the safety concerns, we are concerned about the environmental damage that can happen from the type of derailments which this bill can help prevent. We do not want to see what happened in Ohio happen in Nevada.

ANDREW REGAL:

I am with the Teamsters Local 533 in Reno. I support A.B. 456 and urge the Committee to support this bill in its entirety. It is a matter of public safety. Having worked in northern Nevada in the mining industry at the cyanide plant outside of Winnemucca, I can tell you chemicals coming on rails into Nevada along the Humboldt River are dangerous for everybody. This is not something any of us should take lightly.

DIONNE KLUG:

I represent the United Food and Commercial Workers Union Local 711, and I second everybody else's response and urge you to adopt this bill.

JOE GUILD:

We worked up a head of steam during the recess, and we are ready to help get the Committee back on track.

PEGGY YGBUHAY (Union Pacific Railroad):

Connie Roseberry, the Vice President of Safety and Operations for Union Pacific Railroad, will be calling in.

MR. GUILD:

Our concern is that A.B. 456 might be offending to the Commerce Clause of the U.S. Constitution. Going back to the proponents of this legislation having talked about the old Arizona case, it is still good law. In that case, the U.S. Supreme Court said ever since *Gibbons v. Ogden* (1824), a case from the early years of U.S. Republic, the states have not been deemed to have authority to substantially impede the free flow of commerce from state to state or to regulate those phases of national commerce which, because of the need of national uniformity, demand that their regulation, if any, be prescribed by a single authority. That is the premise of what I am about to say.

In the Assembly hearing and in your package today are materials from proponents of this legislation referring to the Federal Railroad Safety Act (FRSA) and the Interstate Commerce Commission Termination Act (ICCTA), making the assertion that those acts have undermined the authority, if not rendered the Arizona case moot as not being a violation of the Commerce Clause of the U.S. Constitution.

The facts of this legislation are directly on point. Using the language the proponents have brought before you, the FRSA states the laws, regulations and orders related to railroad safety shall be nationally uniform to the extent practicable. Further, 49 USC 20106 entitled Preemption says, "A State may adopt or continue to in force an additional or more stringent law, regulation, or order related to railroad safety... when the law, regulation, or order does not unreasonably burden interstate commerce." In my opinion, that leads to the conclusion that there is a violation of the Interstate Commerce Clause.

The ICCTA gave authority and exclusive jurisdiction over rail transportation to the Surface Transportation Board. In a declaratory order, that Board said section 10501(b) of the Act is intended to prevent a patchwork of local regulation from unreasonably interfering with interstate commerce.

The point is that section 1.28, subsection 1 of the bill limits train lengths. If passed by this Legislature, it would be a violation of ICCTA and thus unconstitutional. The proponents of this legislation argue there is a relationship between train length and derailments.

CONNIE ROSEBERRY (Assistant Vice President of Safety; Chief Safety Officer, Union Pacific Railroad):

I have worked with UPR for almost 20 years, primarily in the law department. The last two years I have spent as a Chief Safety Officer in the Operating Department. I am here to express UPRs opposition to A.B. 456.

Safety is the core value at UPR and every railroad in this Country. Our commitment to safety extends to our employees, the communities through which we operate and the customers we serve. Mainline derailments are down almost 30 percent over the past two decades; and over the past ten years, reportable injuries on our railroad have been reduced by 27 percent, making the past decade the safest for the rail industry in the history of this Nation. Working collaboratively and proactively, the industry is working to further improve on that safety record.

In the wake of the derailment at East Palestine, Ohio, the safety of the rail industry has been under intense scrutiny. Calls for intervention have well surpassed federal safety regulators and are now being discussed in statehouses across the Nation, including in Nevada. While understandable in response to the intense images shown almost daily on major media outlets, much more can be accomplished by having candid discussions about railroad safety and developing data-driven mitigation strategies. Everyone is on the same side of reducing and eliminating derailment. However, policy actions and bad legislation taken reflexively are unlikely to achieve meaningful safety benefits; worse, they could have a wide range of unintended economic and environmental consequences, as well as a negative impact on the free flow of commerce across state lines.

When we look at derailment prevention, we focus our activities around three core areas: human factor derailment, track cause derailment and mechanical cause derailment. Because preventing derailment is complex and multifaceted and every single derailment is different and has a multitude of contributing and causal factors, enacting safety regulations to reduce derailment is generally and most appropriately done by the FRA which is empowered by Congress to oversee and regulate all aspects of railroad safety. The FRA is in the process of beginning rulemaking on a variety of issues identified as causes in the East Palestine derailment, including the appropriate type, number and location of wayside detection devices, which up to this point have been an emerging technology installed voluntarily by railroads and not yet regulatory required. Understand, merely adding wayside detectors without knowing why or

how or what benefits they can bring does nothing to improve railroad safety. The most impactful way to improve safety is by using data and scientific methods when determining detector locations, the types best to use when considering the type of terrains and different grades along the route. A state-by-state approach is not the best way to approach this issue or to improve safety.

The FRA has the expertise and the number of mechanical experts to regulate wayside detector systems and wayside detector communication systems in a meaningful way throughout the entire Country across all rail networks, not just in one or a few states.

Regarding train size, increases in train capacity are the result of a multifaceted approach to operational safety that includes complex train makeup rules, simulations and evolving management of in-train forces. Technology that did not exist ten or five years ago is helping us and our network operations teams model the safest and most appropriate way to build a train and get it from origin to destination.

A train length law is not the solution to blocked crossings. It is potentially solving one issue, but you are creating many more. We continue to leverage technology to reduce or eliminate blocked crossings. We work on grade separations; we are looking at getting federal funds and matches to help in grade separation projects. The train length law will not reduce or eliminate blocked crossing issues and can make them worse. We respectfully ask that you oppose advancement of A.B. 456.

Ms. YGBUHAY:

This is my twenty-ninth year working for the railroad. I have experienced the total safety culture we operate day in and day out at UPR. The safety of our employees is our most precious commodity, as well as the communities in which we operate in Nevada. We have 153 hotbox detectors, dragging equipment detectors and hot wheel detectors in the State. I have a written opposition letter ([Exhibit Q](#)) regarding the elimination of sections 1 through 7 of the original bill.

Before I can start work out in the field and join a work team on UPR property, we perform a safety briefing to make sure we are safe in what we are doing and do not cause any harm elsewhere. I am also required by UPR rules to perform an inspection of all at-grade crossings and to look at the appurtenances to make

sure they are operating as intended. If I do find a defect, and I have, I call the 1-800 number located on the emergency notification sign at every at-grade crossing in our system, which numbers about 20,000. In Nevada, we have 257 public at-grade crossings, and the dispatcher slows or stops the train in response to that report.

This is just an example of the total safety culture. I live it, and it has been enforced and reinforced over the years. Our derailments are down, our employee injuries are down, we are a total safety culture industry.

I live 700 feet away from the main line. I would have never moved my family and my children so close if I thought the train industry was unsafe. We are the safest industry if you look at the Bureau of Labor Statistics. I am a proud employee; our employees are proud employees and have a lot of passion for safety and we love that. We have experts in the field and many departments looking at different safety initiatives. We have a crossing assessment process. We built a model to determine what characteristics at crossings correlate with crossing accidents and shared that with Nevada and every other state in which we operate to reduce crossing accidents. In everything we do, safety is at our core.

PAUL ENOS (CEO, Nevada Trucking Association):

In a lot of ways, the railroad is a competitor. It is more of a collaboration with rails and trucks in intermodal and maritime transportation. We all must work together. We talk about the supply chain, and it is a misnomer because of this linear thing made of steel. That is more of a spider web as delicate as spider silk. If one thing happens, it impacts the entire web. We have seen them over the last few years. We saw that with the potential rail strike in late summer and early fall of 2022.

We opposed this bill because of the train length. The trucking industry is rail. We operate under the same Interstate Commerce Clause, and we have the same federal preemption.

A federal law says no state can say a truck cannot carry a 53-foot trailer, anything smaller than that or have a limit under 80,000 pounds. That is dictated by Congress. They have purview. In Nevada and Utah, we have triple trailers grandfathered in when Congress passed a law in 1991 to freeze longer combination vehicles in 14 states. That became a bit of a problem because of

Arizona's important 21 miles that are a connector between Nevada and Utah on I-15. Congress had to pass a law to allow triple trailers to go on that length of road because Arizona could not do this on its own. Trucks used to park at Railroad Pass, drop a trailer, come back and pick it up. We had to have Congress pass a law because those things are under its purview. For those reasons and because of the uniformity issues, we have the same thing in the trucking industry. We understand where the rail industry is coming on this bill. We are opposed to A.B. 456.

The trucking industry is one of the biggest customers of the rail today. It is interesting how we all work together to move all the freight that we all need and rely on.

SENATOR HANSEN:

One of the people testifying said that since 2000, there has been a 40 percent reduction in rail-related accidents. Over the last six or seven years, since you started to go up to 15,000-foot trains, has there been a spike in rail-related accidents?

Ms. YGBUHAY:

The UPR system had a decrease at of 21 percent from 2019 to 2022. Nevada had one reportable derailment this year, five last year, three in 2021, six in 2020 and eight in 2019.

SENATOR HANSEN:

Is that going up, down? Is there an enhanced safety risk when we go to anything over 7,500 feet? With six or seven years of data, you should either say yes or no. If no, then I do not see any reason other than the inconvenience of certain blocked crossings; if yes, then something needs to be addressed on the safety side.

SENATOR HAMMOND:

The biggest issue of this bill is that one part talks about train length. How long does it block something? What is the safety issue? We heard from those proponents of the bill that one system does not always fit. If the FRA comes down with a ruling, is that enough authority to become universal across the Nation?

Ms. YGBUHAY:

That is true. If the FRA comes down with the ruling, we must abide by that ruling. We are working with them to give them the data we have relative to train length in our operations.

We have a statistic that draws on 16 million data points from the wayside detector systems. That information goes to Omaha for analysis and use in different programs like Precision Train Builder, so we build trains that operate safely over the course from origin to destination.

SENATOR SPEARMAN:

I heard someone during the presentation talk about Donner Pass and the incline steepness. Whenever I drive that, I cannot put on the brakes, but must keep tapping them because the incline makes you go faster. What does it look like with a lot of cars behind you when going down a steep hill or something where controlling gravity is not in your power?

Ms. YGBUHAY:

I can speak to some of the train operations and “buff forces” involved with going with grade. We have system instructions on different areas of our network that reduce the number of trains, the length of trains, the types of trains that we take over different routes. We are self-regulating that today. I do not know the specific route limitation, but I can provide some information about that.

SENATOR SPEARMAN:

We heard testimony from someone about a derailment in Sparks. Can you speak to that?

Ms. YGBUHAY:

I would have to look at the date and pull down that report. I can provide more information once I get the FRA report provided for the Sparks incident.

CHAIR HARRIS:

Why do some train operators say they do not have the training they need to operate these trains safely when you are telling us everything is good? Can you reconcile those things with people who are operating these trains, saying they do not know how to handle the power in the middle or at the back?

MS. YGBUHAY:

I cannot tell you about their testimony or why they feel that way. I am not a locomotive engineer. Extensive training goes on that we provide. I can take some of the testimony I heard today and provide a response to you.

CHAIR HARRIS:

Do all your engineers get trained on operating a train with just one locomotive in the front versus having multiple ones throughout the stretch of cars? Is there any difference in the training, or do you just get trained on how to run one locomotive in the front?

MS. YGBUHAY:

I am not the expert and will have to get you that response.

CHAIR HARRIS:

Do you know why train operators are no longer getting the information from the wayside detectors?

MS. YGBUHAY:

My letter, [Exhibit Q](#), addresses the hotbox detectors and what they call the talking capability. The information has been silenced because of noise interference and other important data over the radio. At this point, information provided to train operators is for defects only, not for every time they go over the detectors.

CHAIR HARRIS:

Is there no way to give them information when a problem occurs? From what I heard they are unaware when things are getting hot. They do not have information available, not just over a detector but indicators when something is going wrong.

MS. YGBUHAY:

My understanding is they do get information of a defect from the hotbox detector.

SENATOR SPEARMAN:

We heard testimony about something going wrong on one of the trains and the ball bearings had burned out, but the engineer did not know what was

happening. Do you have redundant systems in place so that if the hotbox does not alert them, something else does?

Ms. YGBUHAY:

The information from our hotbox detectors is shared with our headquarters, and then dispatch would alert the crew as well.

SENATOR SPEARMAN:

What is the timetable for going from the hotbox to headquarters and headquarters alerting the engineer? What are we talking about in terms of time?

Ms. YGBUHAY:

I will have to research and provide that information back to the Committee.

CHAIR HARRIS:

This Committee is not here to tell you how to run your business, but it sounds like this is information they want to hear. I do not know if this was a response to complaints from other engineers since we only have a small subset of them here in the room today. There is nothing to say their position is prevalent, but it seems like there may be some who do want to have this information real time.

PAUL MORADKHAN (Vegas Chamber):

The Chamber is opposed to A.B. 456. Chamber comments will focus on the cost perspective. You have heard extensive testimony regarding safety and the Interstate Commerce Clause. The Chamber's perspective is rail shipping is concerned with the most cost-effective modes of transportation, especially for large volumes traveling long distance. Rail shipping has a lower cost per mile than trucking. Lower cost benefits consumers. Our concern is the impact this bill will have on goods and consumers if passed with the additional cost of labor, equipment and balancing with the policy.

SHELLY CAPURRO (Burlington Northern Santa Fe Railway):

We support the testimony of Union Pacific and the Trucking Association and are in opposition to this bill.

THERESA BENITEZ-THOMPSON (Chief of Staff, Office of the Attorney General):

Attorney General Aaron Ford wanted to read his neutral testimony ([Exhibit R](#)) in person, but I will read it into the record.

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ASSEMBLYMAN CARTER:

In Kansas, an 8,500-foot length passed in March. It was carried by the majority party and passed by bilateral support in the Kansas Senate. It is happening in statehouses rather than in the federal government because action taken to enhance train safety in 2018 was rolled back for political purposes. We cannot trust those agencies at the whim of the political weathervane to protect the citizens of our State. That is the whole purpose of this bill.

CHAIR HARRIS:

We close the hearing on A.B. 456. Having nothing further to come before the Senate Committee on Growth and Infrastructure, we are adjourned at 6:25 p.m.

RESPECTFULLY SUBMITTED:

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Diane Rea,  
Committee Secretary

APPROVED BY:

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Senator Dallas Harris, Chair

DATE: \_\_\_\_\_

| <b>EXHIBIT SUMMARY</b> |                       |   |  |  |
|------------------------|-----------------------|---|--|--|
| <b>Bill</b>            | <b>Exhibit Letter</b> | <b>Introduced on Minute Report Page No.</b> | <b>Witness / Entity</b>  | <b>Description</b>   |
|                        | A                     | 1   |  | Agenda   |
|                        | B                     | 1   |  | Attendance Roster  |
| A.B. 456               | C                     | 4   | Randy Soltero  | Freight Train Length Fact Sheet  |
| A.B. 456               | D                     | 4   | American Train Dispatchers Association   | Affects of Very Long Trains from the Perspective of Train Dispatchers                                  |
| A.B. 456               | E                     | 4   | Brotherhood of Locomotive Engineers and Trainer  | Perspective on Very Long Train Operations  |
| A.B. 456               | F                     | 4   | Jason Doering / International Association of Sheet Metal, Air, Rail and Transportation Workers | Support Testimony  |
| A.B. 456               | G                     | 4   | Jason Doering / International Association of Sheet Metal, Air Rail and, Transportation Workers | A Brief on the Effects of Long Trains on Commerce, the Infrastructure, the Environment, and the Public |
| A.B. 456               | H                     | 4   | Jason Doering / International Association of Sheet Metal, Air, Rail and Transportation         | Letter from Lawrence M. Mann   |

|          |   |   |   |  |
|----------|---|---|---|--|
|          |   |   | Workers   |  |
| A.B. 456 | I | 4 | Jason Doering /<br>International<br>Association of<br>Sheet Metal, Air,<br>Rail and<br>Transportation<br>Workers    | Statement on Ninth Court<br>Decision from Lawrence M.<br>Mann                |
| A.B. 456 | J | 4 | Jason Doering /<br>International<br>Association of<br>Sheet Metal, Air,<br>Rail and<br>Transportation<br>Workers    | Video presentation   |
| A.B. 456 | K | 4 | Jason Doering /<br>International<br>Association of<br>Sheet Metal, Air,<br>Rail and<br>Transportation<br>Workers    | Decision Ninth Circuit United<br>States Court of Appeals                     |
| A.B. 456 | L | 5 | Gabe Christenson /<br>International<br>Association of<br>Sheet Metal, Air,<br>Rail and<br>Transportation<br>Workers | Support Testimony  |
| A.B. 456 | M | 5 | Matthew B. Parker /<br>Brotherhood of<br>Locomotive<br>Engineers and<br>Trainmen                                    | Testimony in Support   |
| A.B. 456 | N | 5 | Matthew B. Parker /<br>Brotherhood of<br>Locomotive<br>Engineers and  | Wayside Detectors Notice of<br>Safety Advisory 2023-01<br>from Amitabha Bose |

|          |   |    | Trainmen   |   |
|----------|---|----|--|---|
| A.B. 456 | O | 5  | Matthew B. Parker /<br>Brotherhood of<br>Locomotive<br>Engineers and<br>Trainmen | Train Makeup Notice of<br>Safety Advisory 2023-02<br>from John Karl Alexy |
| A.B. 456 | P | 5  | Matthew B. Parker /<br>Brotherhood of<br>Locomotive<br>Engineers and<br>Trainmen | Train Length Notice of Safety<br>Advisory 2023-03 from<br>Amitabha Boss   |
| A.B. 456 | Q | 18 | Peggy J. Ygbuhay   | Opposition Letter   |
| A.B. 456 | R | 23 | Attorney General<br>Aaron Ford   | Letter in Support   |