

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 21, 2024
Rough Draft

AGUILAR: Good afternoon and welcome to the Executive Board. My name is Senator Ray Aguilar. I represent the 35th Legislative District and serve as Chair of the Executive Board. We will start off by having members of the committee, committee staff do self-introductions, starting on my far right with Senator Clements.

CLEMENTS: Rob Clements, District 2, which is Cass County and eastern Lancaster.

BALLARD: Beau Ballard, District 21.

LOWE: John Lowe, District 37.

TREVOR FITZGERALD: Trevor Fitzgerald, committee legal counsel.

VARGAS: Tony Vargas, District 7.

JACOBSON: Mike Jacobson, District 42.

AGUILAR: Also assisting the committee is our committee clerk, Sally Schultz, and our committee page is Julie Skavdahl from Harrison, who's a history major at UNL; Molly Penas is from Fort Calhoun, who is a political science major at UNL. This afternoon, we'll be hearing 4 bills, and we will be taking them in the order listed outside the room. On the tables near the entrance, you will find green testifier sheets. If you are planning to testify today, please fill one out and hand it to Sally when you come up. This will help us keep an accurate record of the hearing. Please note that if you wish to have your position listed on the committee statement for a particular bill, you must testify in that position during the bill's hearing. If you do not wish to testify but would like to record your position on the bill, please fill out the yellow sheet near the entrance. Also, I would note that the Legislature's policy that all letters of the-- for the record must be received via the online comments portal by the committee by 8 a.m. the day of the hearing. Any handouts submitted by testifiers will also be included as part of the record as exhibits. We would ask if you do have any handouts that you please bring 12 copies, give them to the page. If you need additional copies, the page can make you some more. Testimony for each bill will begin with the introducer's opening statement. After the opening statement, we will hear from supporters of the bill, then from those in opposition, followed by those speaking in a neutral capacity. The introducer of the bill will be given the opportunity to make a closing statement if they wish to do so. We ask that you begin each testimony by giving us your first and last name.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Executive Board February 21, 2024

Rough Draft

Please also spell them for the record. Because the Executive Board meets over the noonhour and members have other hearings beginning at 1:30, we'll be using a 3-minute light system today. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning. And when the red light comes on, we will ask you to wrap up your final thoughts. I would remind anyone-- everyone, including senators, to please turn off your cell phones or put them on vibrate. With that, we begin our hearing today with LB24-- LR284CA. Welcome Senator DeBoer.

DeBOER: Good afternoon, Chair Aguilar and members of the Executive Board. This is actually one of my very first times being in front of the Executive Board, and it's the first time in this room. The last time we were under construction here. So I'm excited to be with you all today to introduce LR, my LR-CA. The impetus behind this LR-CA is something like when we started this year, we were trying to codify many of our principles, because in, in the rules, in our rules, because we understand we live in an era of term limits. We understand that there are-- there are things which are not carried on in institutional memory of our body in quite the same way, because of the, the situation with term limits, the, the, the just the exigencies of where we're at. The Ombudsman's Office look, which may or may not include the Inspectors General, is something that I feel very strongly should be a part of our Legislature going forward. When I first started here, the good work that they did over in the Ombudsperson's Office, the Inspector Gen-- or the Public Counsel's Office, with constituent work, I mean, everyone here, I'm sure, has seen the good work that they do with respect to constituent work. I also think that the work that they do in the Inspectors General and in their oversight capacity is very important. This is something that we really need to make sure continues. To that end, I brought this LR-CA because I think the people ought to have a voice on something this integral to what we do in this body. And I think that this is something that you all may say, OK, there's not enough specificity about what it means to create the Ombudsman's Office in the Constitution. And I'm totally willing to take more specificity or whatever you all would like to do with that. And I would leave it to this board who has, I think, worked on some of these issues, necessarily without as much input from folks like me, because you all were working on that because of privilege. So I understand that you may want to be more specific or whatever, but I do think that this is an issue that ought to go before the people, and I think it ought to be codified. I think we have permissive authority to do this already. I think everybody in this room knows we do. But

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 21, 2024
Rough Draft

codifying it to make it explicit and necessary that we have a Public Counsel that looks out for the public's interest as part of the branch that we are, especially as a Unicameral, especially in this unique system that we have, having someone out there who's sort of the point person for the public is really important. And I think that the, the people of Nebraska will find it so. You know, I, I had a-- someone approached me about an LR-CA before. It was a valid point. The, the person said, we want to change our constitution because it refers to the Governor always as he. Right? OK. That's sort of a valid point. OK. But I talked to some members and I thought through it, and everyone said, you don't change the constitution for something like that, right? The constitution is a pretty important document that we don't want to modify just for the sake of modifying. I think this rises to the level of something that we should change our constitution for. Codifying the principle that the public has someone that is looking out for them in our institution and has someone that is going to be responsive to our needs and the public's needs to help them navigate through our system is important to me. So that's why I brought this LR-CA. Again, happy to work with you all if you think that there needs to be something tweaked about it. But I do think that this is something that should go forward and I'm happy to take any questions.

AGUILAR: Questions for Senator DeBoer? Seeing none-- I'm sorry.
Speaker Arch.

ARCH: Thank you. Senator DeBoer, I don't have a question, but I do have a comment. I think that your, your desire to see that the Ombudsman's Office continues in a strong position and provides those kinds of services for the public is, is dead on. I think that's the desire, certainly, that I share with you, whether it's a constitutional amendment or a different structure. I mean, I think that-- I think we're-- you and I, though, are on the same page that the, the role of the Public Counsel is essential to the public. And, we need to make sure that it is strong and stays strong. Thank you.

DeBOER: Appreciate that.

AGUILAR: Other questions? Seeing none.

DeBOER: If this starts to go a little late, I might leave. But if not, I'll be here.

AGUILAR: Thank you. Any proponents?

JOSEPHINE LITWINOWICZ: And you don't change the constitution to secede. If we ever do that, that would be a problem, basically secede.

AGUILAR: What's your name, please?

JOSEPHINE LITWINOWICZ: My name is Josephine Litwinowicz, L-i-t-w-i-n-o-w-i-c-z. And. Just want to say thank you because we got-- going to have some accommodations to speak in here. And I was told that the microphone picks me up when I sit down here. And then we're going to also quickly get some other microphones, other things for people with low voices and then can't sit and have problems. And that's very nice. I appreciate it. And, oh, let's start with the Ombudsman. I'm not going to go to the side points of the issue. But the Ombudsman here, that's the one we're talking about, I was in a com-- I was in a meeting and I was told that the Ombudsman represents the Legislature. And now I was like, what? So somebody can clarify that, because that was very detrimental to the potential future of that discussion. Anyway, I'm happy with this and that we're going to quickly get some other equipment and, for other people. And it was a good trade. Anyway, so as far as this goes, you know, I'd like to know what the Ombudsman, maybe somebody can tell me. They don't have to ask a question. They can tell me. And also, you know, just the way you talk about not having, you know, attorney-- a watchdog for the, I mean, people don't want-- they want to get rid of that. AG Hilgers wants to get rid of that, the Governor-- actually goes to Ricketts, wants to get rid of that. So I think it's necessary because look how bad-- certain data support-- look at child welfare and look at the correctional system-- joke. And so now you want to cover yourselves. I would suggest [INAUDIBLE] let them stay there and just, you know, just get them embedded with you. That's a lot of, you know, over half the IGs in the federal system are in bed with the people that are watching. I would do it that way, but this looks really bad. Actually, both would be bad. But their own, come on. Thank you. I will ask somebody, at least with the Ombud-- who the Ombudsman actually represents.

AGUILAR: Any questions for the testifier? Seeing none, thank you. Any other proponents? Seeing none, are there any opponents? Neutral testimony? Senator DeBoer, would you like to close? Senator DeBoer waives closing. Now we're ready for LB994 from Senator Wayne. I might also mention that online accommodations written position proponents, 1; opponents, 1.

WAYNE: Welcome.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 21, 2024
Rough Draft

AGUILAR: Welcome, Senator Wayne.

WAYNE: What bill?

_____ : LB994.

WAYNE: LB994. OK. Welcome. My name is-- welcome. Good afternoon, Chairman Aguilar and the Executive Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is north Omaha and northeast Douglas County. The bill before you is very simple. I think it's overall about a broader picture of how we run Corrections and how we pardon and parole people. What I am passing out is a proposed constitutional change that is in Judiciary right now. And I'll tie this-- how this all works together real quickly and I'll get out of your guys' hair. So one thing that we're not doing a very good job of in the system is from start to finish. We have obstacles, bottlenecks for people getting on parole, people getting on-- people being pardoned too. And so I'm trying to figure out how do we make the system better throughout the whole thing? And so one thing that LB994 directly points out is that we have a constitutional obligation to control what I would say Corrections in any fashion that we, we deem to. Now, this is a little bit different when you think of the constitution as compared to other states where the Governor completely oversees Corrections. In our constitution, Article IV, Section 19 says the Legislature will determine the general management control of all charitable, mental, reformatory and penal institutions within the Legislature. So we actually get to dictate. So what I want to give you is a bigger picture of this. If we could-- and I don't believe the intent is not for the Legislature to run Corrections. We have a hard time running ourselves. And 5,000 people that we would have to directly oversee would probably be damn near impossible. But I do want to say that in Arkansas they actually contract out with a public-- a quasi public board that oversees their Corrections. And when you look at our constitutional obligation, and then you mirror that with the constitutional amendment change, I'll show you how this can work. What we could do, actually, is give this oversight to the Board of Parole. And by doing so, we already have a board that is appointed by the Governor, confirmed by us, that, that is public, is transparent. But now we get to watch people come from day one when they walk in to day 30 or day 100 when they leave. So what we say for defense attorneys and people, they say there's only 2 days that you're incarcerated: the day you go in and the day you go out. And the problem is we have people watching on the day we go in, but then we go to a separate body on the day we go out. And what you'll hear in

Transcript Prepared by Clerk of the Legislature Transcribers Office

Executive Board February 21, 2024

Rough Draft

Judiciary every time we talking about bottlenecks is the Pardons Board or the Parole Board, excuse me, doesn't have any control over who they get to parole in this sense. If you are required to do programming, it's the Department of Corrections who does the programming, not the Board of Parole. So if you don't have your programming done, you can never meet the requirements to get a parole. So there's this constant battle of bottlenecks and finger pointing that has led to legislation. Last year I introduced a bill, this year Senator Bosn introduced a bill to move the operations and administration of the Parole Board underneath Corrections. And that's where it used to be before this body decided to move it underneath the Parole Board. And so I think if you take a step back and say, if we want to go from start to finish, we want to make sure that we are providing rehabilitative services, we are making sure that everybody is in a line to when somebody comes in the system, what do we want that person to look like and feel like and do things when they come out? There has to be some kind of accountability and consistency through the entire system. And right now, it's not. And that's why we're seeing so many problems with so many people being denied parole who are eligible for parole because many of them aren't getting programming and they're not getting programming because that's a different entity overseeing that. And it does cause problems. So what you have before you is if you think about pardons and you think about at the very, very end of the cycle, we have a Pardons Board. I think it is very difficult for a Pardons Board being 3 elected people who, if you think about that, can't have a conversation until they are in front of each other publicly. So think about our-- how we interact and how we have tough conversations in Exec and those kind of things. Our Secretary of State, our Attorney General and Governor cannot meet and have a conversation unless it's public about the individuals they're about to pardon. Because if they get 2 in a room, they've got quorum, so they can't have any conversations. So they show up individually with each individual kind of what they might do. But then somebody makes a motion and now you're in a position where I don't necessarily know all the reasons why you might not pardon somebody, why you might do. But very rarely have you seen-- actually, I haven't seen at all-- a split vote on anything because it's kind of like whoever makes the first motion, the other 2 are like, I don't want to-- I don't want to go against the Governor. I don't want to go against the Attorney General. I don't want to go against the Secretary of State. So what I'm trying to do is what most other states are doing, which is there's one person, the Governor. Most states have some kind of advisement, which would be the Board of Parole in this situation underneath the constitutional amendment. Now,

you take that constitutional amendment and put it with our current constitutional obligations of LB994, and if you were to put the control of Corrections underneath the Board of Parole, now you have fluidity and constant-- and constant communication through the whole process. But they can oversee Corrections, make sure they're getting everything they need to do to get back into society. The Parole Board can better program from a top down of what they need to parole people. And then at the end of all of that, the Governor can make the final decision on a pardon. So to me, it's a continuum of how do we get people in and out in a better way than what we're currently doing, because we have a separate board in our constitution, which is the Parole Board, that has no control over how we parole people. And recently we just learned that victim-- we are being [INAUDIBLE]-- violent reduction program just got canceled by direction of Corrections. Well, for the last 5 years, the people who are waiting on parole, that's one of their mandatory programming. And when asked in Judiciary, what's the replacement, they don't have an idea yet. And so parole gets up and testifies in front of Judiciary and they say, well, kind of waiting. We don't know what to do because we got to get-- we got to get this specific programming. And so there's this constant disconnect. And so we got to figure out how to put them all in the same room under one roof and one person having an authority or a board having an authority to make this actually work better than what we're doing. So that's the concept behind. And I wanted to give the full picture, not just this bill, but the constitutional amendment in Judiciary and kind of how it all works together from start to finish, from when someone enters our Corrections until they get out and hopefully one day get a pardon. With that, I'll answer any questions.

AGUILAR: Questions of Senator Wayne? Senator Jacobson.

JACOBSON: Thank you, Mr. Chairman. So, Senator Wayne, I'm trying to understand. So today it's the Governor, Attorney General, and Secretary of State that serve as the Parole Board. The Governor does have--

WAYNE: Pardons Board.

JACOBSON: Or the Pardons Board.

WAYNE: Correct.

JACOBSON: The Governor doesn't have a unilateral authority to pardon.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 21, 2024
Rough Draft

WAYNE: Correct.

JACOBSON: It takes a majority vote of the 3 of them.

WAYNE: Correct.

JACOBSON: Are you concerned at all about vesting that much power in the Governor himself?

WAYNE: I'll always have concerns about vesting that much power in any individual. And that's why the Parole Board would also give some advice. And that's how a majority of the states do it. There is an independent board that provides recommend-- recommendations. About 24 other states do it that way.

JACOBSON: But, but a vote would be much better than advice. Would you not agree?

WAYNE: I would agree. But, but the reality is, is I'd rather have one person where you can talk to that one person and figure things out versus honestly, 3 elected people that are statewide, that are-- it's all politics instead of I think sometimes what's in the best. And I think if you have a Governor who's termed out may, may make some more tough decisions on what, what parole looks like than individuals who continue to run for office.

JACOBSON: But I guess that's part of my point is you've got-- you've got term limits. And so having it seems to me 3 people that aren't on the same maybe election cycle might also create more accountability if you've got 3 people rather than 1.

WAYNE: Yes. But for me, I mean, the bill in front of you isn't necessarily about that. But for me, it's about creating start to finish. And right now we have too many actors start to finish that don't talk to each other and I think does a disservice and why we have so many people jam out.

JACOBSON: Thank you.

WAYNE: Yep.

AGUILAR: Other questions? Yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 21, 2024
Rough Draft

BALLARD: Thank you, Chairman Aguilar. Can-- so I'm reading the fiscal note. It would not be 400 new-- \$400 million new dollars. It would be a transfer.

WAYNE: Yes. I mean, yeah, I saw the fiscal note. Yes. I mean, we're already budgeting for the operations of Corrections through currently the agency that has it. So it wouldn't be new dollars. We would transfer those dollars to, to us and whoever we--

BALLARD: And who would be in charge of allocating those dollars [INAUDIBLE]?

WAYNE: Theoretically what I just proposed with Parole Board. We would just transfer those dollars to that agency, parole, parole agency, Board of Parole. I mean, if that's the way the body, I mean, the body may say we want a full independent 10 member body. I don't know. This is kind of just to start the conversation about, one, we do have the constitutional authority, unlike HHS, we do have the constitutional authority to directly oversee Corrections. There's no-- there's no gray area there. It's in the constitution.

BALLARD: OK. Thank you.

AGUILAR: Other questions? Seeing none, thank you, Senator.

WAYNE: Thank you.

AGUILAR: We'll now hear from proponents.

WAYNE: And I'm just going to say I have a, a briefing and I have a-- appointments at 1:00. So on the next joint hearing. I'm sure Senator Conrad can handle my part.

AGUILAR: Seeing no proponents, are there any opponents? Neutral testimony? Seeing none, that closes the hearing.

WAYNE: Got to close.

AGUILAR: Sorry.

WAYNE: I just want to remind everyone, yeah, the Speaker announced consent calendar items. [LAUGHTER] I believe this is a possibility. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Executive Board February 21, 2024

Rough Draft

AGUILAR: Written position comments: proponents, 1; opponents, 1; neutral, 1. That closes the hearing on LB994. The hearing on LB1343 and LB1293 will be a combined hearing. If you plan to testify on either bill, we would ask you-- that you fill out a green testifier sheet for each bill you are testifying on and clearly state in your testimony the position you are taking on each bill. Welcome, Senator Conrad.

CONRAD: Thank you so much, Chair. Good afternoon, members of the committee. My name is Danielle Conrad. It's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I'm here today proudly representing north Lincoln's "fightin'"46th Legislative District. And I'm proud to introduce LB1293. Before I jump into my prepared comments, I was thinking a lot as I was kind of looking over the, the busy to-do list that we have on our calendars for legislative days. And a couple of things struck me, in having the hearing for, for this bill before the Executive Board today and then we have the Arc senatorial dinner tonight. And I was thinking a lot about my good friend, Senator Pat Engel, who was Chair of the Executive Board and a seatmate of mine in the Legislature. And then, of course, the father of my, my legislative aide, Julia Holmquist. And Pat was such a good senator, and he was such a good friend to me. And 2 of the things, even though we disagreed on a bunch of different issues, 2 of the things that he said over and over and over to me that still resonate to this day were take care of the most vulnerable, if you can, if you have the opportunity as a state senator; and take care of the Legislature because it's your duty. It's your obligation. It's, it's not about the personalities or the politics of who's sitting in the executive branch or in the Attorney General's Office or on the Supreme Court. It's the fact that we worked hard to get elected to the Legislature, and we take an oath to defend this institution. And that should be a unifying theme amongst us as colleagues, even though we have principled disagreements on other areas of policy. And so I was thinking about Pat a lot in preparation for today and about those, those 2 really important pieces of wisdom that he imparted on me as a young senator and, and still influences my thinking today. So I think it also provides the right lens for this legislation. And there's hopefully no doubt that I have significant disagreements with the Attorney General's Opinion that he issued this summer challenging the constitutionality of legislative oversight, which has been well-established in some instances for over 50 years and at least over a decade in other instances. And it was carefully negotiated by this body with the other branches of government to bring really important value to Nebraska taxpayers and our most vulnerable.

This isn't just ancient history. And you know this from the Saint Francis work and we know this from some of the issues that we are facing before our various committees today, our 2 most troubled agencies in state government are 2-- some of our 2 largest state agen-- govern-- agencies in state government have a history of taxpayer waste, fraud and abuse and have hurt vulnerable people that are entrusted to their custody. I mean, there's just no sugarcoating it. That, that is undeniable fact. So in order to address this mismanagement, this waste, fraud and abuse and this harm that sometimes even results in death, the Legislature has utilized its undeniable and well-established legislative oversight to try and get extra ears and eyes on what's happening in those institutions. I disagree with the legal analysis in the Attorney General's Opinion. And we've debated that at the law school. We've debated that all over the newspapers. We've talked about that privately with each other. A lot of us have discussed these issues. You-- I would direct the committee's attention to the statement of intent on this measure to see some additional analysis that I have in that regard. But the thing that's important to remember is now we're at this unprecedented point in our state history, that has called into question the power of this institution to carry out basic legislative oversight function on our most troubled agencies, which hurt the taxpayers and that hurt vulnerable people. And so everyone on this committee and Speaker are trying to work in good faith to figure out a path forward. And I appreciate and I understand that. You heard a lot about the MOU that's been developed, on hearings for the measure the Speaker introduced last week. I know that, again, that is evidence of good faith to try and figure out how to restore legislative oversight. But let me be clear. Whether it's the Attorney General's Opinion or it's the MOU that's been developed, neither of those have the force of law. They're simply pieces of paper. You know what does have the force of law? The Nebraska Revised Statutes that we pass, and they carry the presumption of constitutionality until the court says otherwise. And I'm concerned about the slippery slope where we sit down and we let other branches of government tell us how they're going to follow the law that we pass on behalf of the people, or when they're going to follow the law that we pass on behalf of the people. That's a dangerous precedent. It's a very dangerous precedent. I understand it was negotiated in good faith because of the circumstances that we find ourselves in that we did not ask for. But I'm very, very concerned about that. And the good news is that with the legislative resolution to provide a broader look at legislative oversight, I think we're going to have the opportunity to step back from this present potential constitutional crisis and figure

out a smarter, stronger way to carry out legislative oversight moving forward. And that's the right vision and that's going to be a lot of hard work, but it's appropriate. And we need to learn-- lean into that. And I'm grateful for the Speaker and the Executive Board for having the vision to put that together. I will also tell you that I do think there are components in LB1321 that you've selected as a priority and that the Speaker's introduced that I understand it will be the primary vehicle for reform moving forward. But it, it does need to be improved through the process. It is absolutely number one from a drafting perspective. We don't need to reiterate sections of the Nebraska Constitution. That's existing law, whether we reiterate it or not. But it is conspicuous that in that measure we did not reiterate the state Institutions clause where our primary source of oversight over these troubled institution emanates from. So we at the very least need to fix that part. And, and we can fix some other pieces moving forward, because I am concerned that LB1321 does concede too much to a misguided political Opinion from the Attorney General and unnecessarily so. But I do appreciate, understand that it's brought forward in good faith to try and move our legislative oversight and authority forward. The other thing that I think that we need to be really thoughtful about is that there's a skepti-- skepticism within the body and beyond the body saying, OK, Legislature, you're going to pass LB1321, allegedly. And then what happens next when the judicial branch or the executive branch again thumbs their nose at our legislative authority? Then will we stand up for ourselves? Then will we mean it? Then will we move forward to test these actions in court? And we need to be prepared to answer that really, really clearly with how we move forward. Because I don't have a good answer for that when people ask me that outside of the body. And that-- those decisions reside in this Executive Council, in this Executive Committee. So we need to be really clear about whether or not what our intention is, if and when we move forward to pass LB1321 in one form or another. The other thing that I want to let the committee know about is that in the wake of this Opinion, I introduced a 4-package-- a 4-bill package. One, to remove the legislative grant of authority in issuing these kinds of Opinions. The Attorney General is only allowed to issue these kinds of Opinions because we said he could under 84-215. So if that's going to be politicized, weaponized and misused, we should repeal it. And the Attorney General, state agencies and other citizens would retain plenty of other legal remedies to challenge an act of the Legislature. But it wouldn't cause the murky confusion that 84-215 has in this instance. Additionally, if the Attorney General and the executive branch are going to push back against basic legislative

oversight, what is the remedy for the taxpayers? What is the remedy for the vulnerable Nebraskans that are hurt by these big bureaucratic systems? So I have 2 bills pending in the Judiciary Committee to restore broad taxpayer standing so we open the courts to people who are hurt by government to seek some redress if our Attorney General and our Governor are not going to provide that redress and if we do not have legislative oversight. The other measure in the Judiciary Committee would remove protections, legal protections that we have afforded to big government bureaucracies when they fleece the taxpayers and hurt citizens under the guise of sovereign immunity. So those would be other remedies that we could pursue. And then updating and reforming our OIG statutes without conceding too much is the 4th piece in the 4-bill package that I brought forward. So I'm happy to work with the Speaker and this committee on moving LB1321 forward, on being a part of a constructive process with the legislative task force to look at oversight-- bless you, Senator Jacobson. But this is serious business, and we find ourselves in uncharted waters needlessly so. If the Attorney General had concerns, he could have issued his Opinion at any time or informally or worked constructively with the Legislature. He chose not to. And perhaps even more grave than him using the power that we had granted to him under 84-215, we've allowed the executive branch of government to use that as an excuse to not carry out existing law, and that is very dangerous. If they seek to change law, they have every right to do so, to petition this body, to repeal bills, to reform bills. PRO weighs in on your bills, my bills, everybody's bills all the time. There's what, 20 bills before the Legislature this session that have been introduced on behalf of the Governor? There's immeasurable ways for the Governor to put his stamp on public policy. But thumbing their nose at existing law that carries the presumption of constitutionality cannot and should not be one of the remedies that we allow to stand. And if the MOU is called into question and on its very face, on its very terms, not only does it not have the force of law, I mean, I don't know what the consideration would be given to make it enforceable contract, but it says right up front, if either party decides to change their mind, they can pull out of it. So what's going to hold the executive branch to that MOU if they hit the next snag? And that's why we have the belt and suspenders that comes with LB1321 and the legislative task force. But the MOU, while well intentioned, is not a remedy. So we need to be really thoughtful about that as well. The last piece I will leave you with is this. When seeking to protect our institution and the people's branch of government, and legislative oversight, which is undeniable and granted to us in the Nebraska Constitution not only through the

separation of powers, but also the state institution clause and also the papers and documents component, we didn't grant that to ourselves. We did not write that in the constitution and say the Legislature is going to give itself all of this power. That is a grant of power from the people, from Nebraskans, not to the executive branch, not to the judicial branch, to the legislative branch, because they trusted the people's branch to stand up for the people, even when it's hard, even when it's people in those high branches of government that we sure-- share warm personal or professional relationships with because we can and should maintain those relationships, but not by sacrificing the will of the people, not by allowing taxpayers to be fleeced and not allowing vulnerable Nebraskans to be hurt. That grant of the people to this body is clear and undeniable, and we need to stand in our power and honor their trust. I'm happy to answer questions.

AGUILAR: Questions? Yes.

VARGAS: Thank you very much for--

CONRAD: I'm very passionate about this.

VARGAS: No, no. It's-- yeah. I love the passion, you know. And thank you, too, for LB1343, for LB1293, for you and Senator Wayne for bringing this.

CONRAD: Yeah.

VARGAS: You know, when, when this first-- we first had this issue--

CONRAD: Yeah.

VARGAS: --speaking for myself, my first concern was the same exact thing, which is the fact that the executive branch will choose not to follow through on our statutory obligations is a very dangerous precedent to send. And we're seeing it. We've seen it with funding allocations for things that haven't been built. YRTCs was one, something that, you know, we had discussed.

CONRAD: Yeah.

VARGAS: We've seen it in Appropriations Committee when funds were supposed to go out for, for, let's say, salary increases or for increasing rates and they weren't followed through. And my concern is that sometimes these things are not being followed through. And then

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 21, 2024
Rough Draft

it's, it's largely because there isn't the accountability. So I am concerned. I signed on to--

CONRAD: Sure.

VARGAS: --you know, the legislative resolution because we have to do something. I'm really concerned about the fact that it doesn't have the same accountability as, as statutory obligations. I'm also concerned about the state institutions clause that you also mentioned. I'm glad that you're bringing that up in the record. But I'm also concerned that we don't have the accountability even when we pass the statutory authority for holding the executive branch accountable. I don't know if you want to speak to that. You know, I support-- I know what you're trying to do. I support the intent. I support the intent that we're also trying to do in the Executive Board. It's not easy. But I'm worried about that, too. I just don't know where we go.

CONRAD: Yeah. No, thank you, Senator Vargas, I appreciate that. And, I, I think that there's definitely some tweaks that we can work together on in regards to the primary vehicle, which will be LB1321, maybe just to reiterate or reaffirm certain components of the constitution that are available to us, perhaps to tighten up a few technical aspects just to make sure that we're not conceding too much in that regard. I am, I think-- I'm hopeful there's a path forward there that will be mutually agreeable to members of the Legislature. When it comes to overall accountability, yeah. I think that there's a lot of issues there. And I think term limits doesn't help us, in having that, that kind of long view opportunity and vision to kind of see how these systems work together and to make sure that there is accountability. Now we do have to, you know, let go once we appropriate and once we pass laws. And there is some discretion that's afforded, of course, through our elegant system of, you know, 3 branches that are separate and co-equal to allow the executive some latitude in terms of how they implement or how they execute appropriations that we provide. Right? But there also needs to be a clear check on those, those separation of powers. And when the executive does not carry out the will of the people or the legislative branch or acts beyond their scope of power, the courts and the Legislature do need to have levers to pull to ensure accountability for the people. And again, it's important that we divorce ourselves from the people that are presently holding those offices, because it's not about that. I, I really am grateful to have open lines of communication with Governor Pillen, and we have found a lot to work together on. So it's, it's not about that. The same for Attorney

General Hilgers. I admire and respect his commitment to service, and I think he's a brilliant lawyer. I think he's dead wrong on this one. But, you know, lawyers can have a different conclusion on that. Right?

VARGAS: No, lawyers are right.

CONRAD: But I think that it's, it's harder to understand the remedies of accountability in the term limits era, because we're here for such a short period of time. So having a broader look at oversight will help to strengthen that through the task force. Yeah.

AGUILAR: Other questions?

CONRAD: Thank you.

AGUILAR: Seeing none, we'll now hear from proponents.

JOSEPHINE LITWINOWICZ: How do you follow that? [INAUDIBLE] She's very eloquent. Just [INAUDIBLE]. Tell you, my name is Josephine, J-o-s-e-p-h-i-n-e L-i-t-w-i-n-o-w-i-c-z. I'm definitely in favor of this bill. But to get back to the last one, just for a second, the Ombudsman failed to protect me and might have learned by it. But nobody told me that that knew. You know, I'm just glad I got this victory and, and I won because it's going to be done quickly. So knowing that I won I think is good for-- there's a person that needs to know that. Because when I'm, when I'm targeted for who I am and I have the proof, and it's a nasty phone call, I get mean. I'm going to [INAUDIBLE] get off of this, but not violent because I've never hit a person off the football field, which is sublime violence. And hurting someone is-- anyway. So it makes me want to clutch my pearls. You know, just like, these are my mom's that are 70 years old. You know, and she got them where she was born and raised in Aberdeen, North Dakota [SIC]. So, yeah. So she had values, born in 1930, the same ones that you might expect from growing up there and now I do as well, but I digress. And so it's nice to know that we'll get some equipment quickly. It's a win for us and a win for me. But as far as this bill goes, I mean, come on, people, look at our present government. I mean, we have a 10-year club in the Supreme Court. We got a Legislature up there that can't-- partisan that cannot function at all. We can't slide and we can't start ignoring them, I just want to say the federal law. I mean, OK. But this is important because these organizations have to be overseen by an independent party. Because, you know, the marionette master, Senator Ricketts, you know, his tentacles, because he's got the means, they go everywhere. And there's a very-- second in

command, you know, the XO is Pillen. So I just-- and I don't want it to go that way because I want the people to have a say in proportion with the constitution, And, you know, with a supermajority here, it is partisan, for crying out loud. It turned that way ever since last term's picking of the Education Committee. We just can't let it go that way. We have to have, you know, there's, there's ways that you-- there's times that you don't have public display of what's going on when you pick committee chairs. Come on now. They're partisan, everybody toes the line. It's here. It was-- it was done on party lines. For crying out loud, let's not resemble. And this is not booing this bill. It's going to-- we're just going to resemble-- government gets a lot more largely dysfunctional. Thank you for letting me speak.

AGUILAR: Questions for the testifier? Seeing none, thank you. Are there any other proponents? Any opponents? Neutral testifiers? Seeing none, Senator, would you like to close? For LB1343, there were 2 proponents, 14 opponents. For LB1293 there were 5 proponents, 13 opponents. Senator Conrad waives closing.

LOWE: Motion to adjourn.

AGUILAR: Motion to adjourn. Is there a second?

VARGAS: Second.

AGUILAR: Motion and a second. All in favor say aye. We're adjourned.