

# **One Hundred Eighth Legislature - Second Session - 2024**

## **Introducer's Statement of Intent**

### **LB1293**

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**Chairperson: Senator Raymond Aguilar**

**Committee: Executive Board**

**Date of Hearing: February 21, 2024**

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

On August 16, 2023, Attorney General Mike Hilgers issued a controversial opinion (Opinion 23-008) regarding the constitutionality of the Inspector General Acts. Opinion 23-008 is a misguided and self-serving missive intended to thwart and dilute legislative oversight over our two most troubled agencies: the Department of Correctional Services and Health and Human Services. Generally summarized, the Attorney General concluded that the Inspector General Acts were unconstitutional in that they violated the separation of powers provision of the Nebraska Constitution in that their authority encroached on the executive and judicial branches of government. Despite the purely advisory nature of the opinion, many officials in Nebraska government have unfortunately embraced the opinion as if it has actual legal significance.

Legislative Bill 1293 is in response to the Opinion 23-008 and to the reaction of officials in the executive, judicial, and legislative branches of government to this opinion.

LB 1293 would reaffirm that the Legislature has oversight over the agencies through the Inspector General and Ombudsman's Office, as it has without question for over fifty years. Article II, Section 1(1) of the Nebraska Constitution delineates the Separation of Powers:

“The powers of the government of this state are divided into three distinct departments, the legislative, executive, and judicial, and no person or collection of persons being one of these departments shall exercise any power properly belonging to either of the others except as expressly directed or permitted in this Constitution.” (emphasis added)

Article IV, Section 19 of the Nebraska Constitution provides that: “The general management, control and government of all state charitable, mental, reformatory, and penal institutions shall be vested as determined by the Legislature.” This is independent constitutional authority that the Legislature has oversight and control over the state's prisons, the youth rehabilitation and treatment centers, and other state institutions.

In Opinion 23-008, the Attorney General deliberately obfuscates this provision of our constitution, by generally ignoring it and giving only cursory discussion—of the dissenting opinion—to a 1976 seminal case of the Nebraska Supreme Court affirming this constitutional legislative authority.

LB 1293 would rightly restate that it is within the constitutional and inherent power of the Legislature to manage, control, and participate in the general management of state institutions, investigate state institutional activity, and ensure that state expenditures are consistent with state and public policy. This power of management and control is constitutional, broad, and indispensable under Article IV, Section 19 of the Constitution of Nebraska.

Additionally, LB 1293 also reaffirms that it is within the constitutional and inherent power of the Legislature to secure needed information in order to legislate, hold hearings, and conduct investigations of matters relating to the operation of state government. This power of oversight is constitutional, broad, and indispensable under Article IV, Section 23 of the Constitution of Nebraska explicitly provides that “the Legislature may at any time require information, in writing, under oath, from the officers of all expending agencies, upon any subject relating to the condition, management, and expenses of their respective offices”.

LB 1293 makes various changes relating to the appointment of the Inspectors General and the Ombudsman and describes the statutory authority of these offices, consistent with an appropriate reading of the constitutional framework in Nebraska and our long tradition of legislative oversight in government.

**Principal Introducer:** \_\_\_\_\_

**Senator Danielle Conrad**