

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 22, 2024
Rough Draft

BREWER: Good afternoon and welcome to the Government, Military and Veterans Affairs Committee. I'm Senator Tom Brewer, representing the 43rd Legislative District of western Nebraska and I serve as the Chair of this committee. The committee will take up bills in the order that they are posted on the agenda. And today will be LB1076, LB1243, LB1404, and LB1191. Today is your public part of this legislative process. This is your opportunity to express your position on the legislative issues before us today. Committee members may come and go during the hearing. It's just part of the process. They have bills to present in other committees. I do have a note that Senator Halloran is in-- first up in Revenue today, and I believe Senator Hunt has got a bill, too, so don't panic if we come and go. I'm fourth up in Judiciary, which I'm hoping means we'll be done in here by the time I get to that point so stand by. I ask you to abide by the following procedures. First, please silence or turn off any electronic devices so we don't get interrupted. When it comes time to present, we ask that you move forward and we were going to use-- we're going to use a light system today. You'll have 3 minutes. So 2 minutes green, 1 minute in the amber, and then it turns red. We don't have Dick Clark's handy dandy alarm going off so--

NEAL ERICKSON: He taught me.

BREWER: Oh, did he? Oh, well, hey, the, the, the Dick Clark replacement has been trained so you do get an alarm. So just pay attention to the clock as best you can. Doesn't look like we have enough today where it would be a terrible, big issue. We're going to ask it if you're going to present, to please fill out the green form, print legibly and fill it out completely. Bring it forward-- give it to the committee clerk when you come forward. If again, you want to just record your presence here, there's the gold forms. You can fill that out and then they'll go in the record that you were here today and will show whether your opposition, support, or neutral. If you have stuff to present as far as handouts, we ask that you provide 12 copies. If you don't, let us know, we'll get the pages on that. When you come forward, we ask that you speak directly in the microphone, state your name, and then spell both your first and last name so it goes in the record. And then we're going to go in an order of having proponents, opponents, and then those in the neutral. No displays of support or opposition to bills vocal or otherwise will be allowed from the audience. And we will begin by having committee members introduce themselves starting on the right. Senator Sanders.

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SANDERS: Good afternoon. Rita Sanders, District 45, which is the Bellevue-Offutt community.

AGUILAR: Ray Aguilar, District 35, city of Grand Island.

LOWE: John Lowe, District 37: Kearney, Gibbon, and Shelton.

HUNT: Megan Hunt, District 8, in the northern part of midtown Omaha.

BREWER: All right. And today we have a stand-in for Dick Clark, Neal Erickson has agreed to fill in for him today. Julie Condon is our committee clerk and the Vice Chair of the committee is Senator Sanders. So let me do a quick introduction on our interns. Let's see, Cameron, right there. He is political science and history major at UNL, a senior from Omaha. And then Kristen is our political science UNL senior from North Platte. And they'll be our pages here today. With that, we will invite up our first presenter on LB1076--

JULIE CONDON: She's, she's not coming.

BREWER: --who is on the way.

SANDERS: Nope.

BREWER: Oh, there you go. Welcome to the Government Committee.

MELISSA CANTU: Thank you. First time here. Good afternoon, Chairman Brewer and members of the Government, Military and Veterans Affairs Committee. My name is Melissa Cantu, M-e-l-i-s-s-a C-a-n-t-u, and I work in Senator Cavanaugh's office. LB1076 is an attempt to bring some transparency to state contracts. This bill asks that the governing body of any business with a state contract be required to conduct business directly related to the state contract in an open manner, similar to open meetings law for governmental entities. As the legislative and executive branches have sought and continue to seek reducing the size of government as well as government waste, we are seeing a rise in contracting out various government services. There are times when contracting government services is the most efficient and effective way to provide high-quality services to the people of Nebraska. It comes with a drawback of taking away our own ability to provide oversight of not only those services, but also the utilization of taxpayer dollars. LB461, Speaker Arch's bill, is to ensure that the process of underbidding a contract can not be exploited in the future, the way that it was in the Eastern Service Area child welfare contract of 2029 [SIC]. However, there remains additional oversight

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responsibility for this body beyond just the initial contracting and procurement process. LB1076 is intended to give the Nebraska Legislature another tool for oversight of contracts with state agencies for goods and services. The purpose is to ensure that contract performance measures are being realized. Records requests are one of our main tools to gather information. Many of the records requests that I have previously made, if those records did not sit with the agency, I had no course to obtain the records unless we opened a formal performance audit, pursued a subpoena for the committee, or had to go to the contractor for information to report back to me. As I am sure many members of this committee are familiar with making requests for records from various state agencies, going through a performance audit or acquiring a subpoena would be a far leap from a simple inquiry into a specific program. Not all requests need to rise to that level of bureaucracy. This is why I am seeking an alternative avenue where not only the Legislature, but members of the public would be able to view a contractor making decisions about a state contract and to directly make inquiries. We as a Legislature have the responsibility of oversight. It's our job to ensure that the laws we pass and the dollars we appropriate are being utilized as intended. We are the steward of the people's tax dollars. LB1076 would bring further transparency in contracting. It would help us do our job. Thank you for your time and consideration of LB1076.

BREWER: All right. Thank you. Normally, we don't ask questions of you but you did a good job of opening. Thank you.

MELISSA CANTU: Thank you.

BREWER: All right. So what we'll do now is take any proponents to LB1076. OK. Are there any opponents to LB1076? Anybody here in the neutral? All right. With that, we'll read in our letters. We have 6 proponents, 1 opponent, and zero in the neutral. And with that, we will close on LB1076 and get reset for LB1243. Now, I have sped up the schedule a little for poor old Mike McDonnell so we might have to wait just a little bit for him to get here. If you're planning to testify, please feel free to move forward here and then we'll save some chair shuffling. Well, since we're a little ahead of schedule, we'll give him a chance to get here. I hate to jump around him because he's probably figured out the schedule [INAUDIBLE].

SANDERS: Yeah, he's on his way.

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BREWER: Is he? OK. And I, I don't want you guys to give him a hard time when he gets here, OK? Just let him relax, settle into the chair.

NEAL ERICKSON: You can do that, I can't.

BREWER: Well, I would never do that to Mike McDonnell. How many in here are planning to speak on LB1243? OK. I'm assuming you guys are all in support of it. You look very supportive. Kind of expected to see you--

McDONNELL: [INAUDIBLE]. I apologize.

BREWER: --expected to see you sweating a little bit from running, but.

LOWE: About time.

McDONNELL: Put it this way, trying to run versus running is two different things.

BREWER: Well, we do have a lot of medical professionals here in case that didn't work out while [INAUDIBLE].

McDONNELL: Thank you.

BREWER: All right. Senator McDonnell, whenever you're ready, your-- the, the stage is yours.

McDONNELL: Thank you, Senator Brewer. I apologize for being late.

BREWER: No, no.

McDONNELL: Members of the committee, my name is Mike McDonnell, M-i-k-e M-c-D-o-n-n-e-l-l. I represent Legislative District 5, south Omaha. LB1243, which proposes to codify a critical component in fighting wildland and open-field fires which have burned in all regions of, of the state, the critical component of which I speak is a Wildland Incident Response Assistance Team, WIRAT. LB1243 would codify WIRAT, which has existed only because of a letter in 2013 from then Nebraska Governor Dave Heineman and a subsequent Letter of Agreement entered into the same year by the State Fire Marshal and the Nebraska Forest Service and the Nebraska Emergency Management Agency. I believe it is prudent and good public policy to take WIRAT and place it into our laws. WIRAT provides assistance and guidance to volunteer firefighters and, at times, career firefighters throughout the state. The team's objectives are to assist in preventing, controlling,

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suppressing, and mitigating wildland fires. For the past several years, the increased frequency and intensity of the wildland fires in Nebraska has continued to stretch, bend, but not break the resources available to Nebraska to fight wildland fires. However, with the increased frequency and spread of wildland fires across all of geographical areas of Nebraska more needs to be done to support these combating-- those combating wildland fires. I attended the Governor-- Governor Pillen's Volunteer First Responders Summit held in Broken Bow during August of last year, which focused on two primary areas of volunteer response-- responders: wildland fires and emergency medical services. Though, I have great interest in, in the two areas, I principally have been involved with assisting first responders in the area of the legislation to assist in supplying resources to fight wildland fires, most recently by introducing LB655 during the 2023 session. In addition, I introduced LR156 to focus, focus on several areas of concerns relating to wildland fires. One of the primary objectives of this interim study was to discover the resources available to fire departments when fighting wildland fires. A key-- a key takeaway for me from this-- these three items, last spring's legislative bill, the summit and the interim study was the need for a deeper focus on the support provided to firefighters in fighting these in times of massive wildland fires. The item that surfaced was codifying WIRAT placing the leadership responsibility with the State Fire Marshal and supplying funding to support the operation of WIRAT. I have also brought an amendment to you, AM2620, which was, was handed out at the beginning which would add one position to the Office of the State Fire Marshal specifically hired to oversee the operations of the team. Years ago, in the early 2000s, wildland fires were more focused in limited regions of Nebraska. However, we have experienced in several different regions of the state being impacted by these tragic fires. April of '22, Road 702 fire involved the counties of Furnas, Red Willow, and Frontier where 1,800 people had to be evacuated, which included 5 different towns. September of 2022, Banner County, 4,300 acres burned, and on the scene were 15 volunteer fire departments with 50 to 60 volunteer firefighters leaving their jobs, leaving their homes, resulting in loss of income to their families. October of 2022, Halsey fire burned 15,000 acres. October of '22, the Lancaster and Gage County fires that blew through this part of the state, where in Lancaster County alone, 23 volunteer fire departments were on the scene, along with numerous Gage County fire departments. 2023, the following wildland fires occurred during the treacherous stretch of, of April: Jefferson County firefighters fought one of the largest wildland fires in that area where an estimated 2,600 acres burned.

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Large wildland fires also occurred in counties of Cherry, Lincoln, Wheeler, and Rock. All of these fires during this, this part of April resulted in Governor Pillen declaring disasters of 3 of the 6 counties. Finally, during the same month of April 2023, fire was swept by strong winds from the Iowa side of the Missouri River to Nebraska and Cass County where 650 acres burned. The fire called into service more than 75 firefighters, 26 different departments. As the fire burned into two-- for 2 days, Governor Pillen declared yet another disaster, the opening up funding from the Governor's Emergency Fund. Nebraska National Guard was also on the scene with ground support and helicopter support. I know you all have examples of this, and it's been ongoing and it continues, and the first responders continue to make those calls without complaint. The only thing they're, they're asking is if we can look at this through our, our, our summit that the Governor held through our hearing that, that we held through our discussions of senators, how do we help these first responders? How do we take that next step as a state? How do we-- too proud to steal good ideas? No, we're not. If other states are doing something that we should be doing, let's, let's, let's learn from them. So that's what the whole goal of this-- but it's time to do something. It's time to put money up. Right now, we're talking about-- your fiscal note is wrong. You're looking at \$120,000 to assist, but we're also going to talk about [INAUDIBLE] and I don't have that fiscal note of that full-time person that was added by the amendment. But I'm here to answer any of your questions, the experts are behind me.

BREWER: All right. Thank you, Senator McDonnell. So in layman's terms, the, the amendment will give you someone who basically will be the one that has oversight and, and helps to manage specifically what we're-- what we're doing in the bill so that you don't have a whole bunch of pods out there doing their thing and nobody bringing it together.

McDONNELL: Yep, the tip of the spear and the-- and the fiscal note will be following.

BREWER: Gotcha. All right. All right, let's see if we don't have some questions for you. Questions?

McDONNELL: I'll be here to close.

BREWER: Yes, Senator Lowe.

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LOWE: Thank you. And thank you, Senator McDonnell, for bringing this bill. How many fire bills and rescue bills have you brought before the Legislature during your 8 years?

LOWE: Well, probably the people behind me are going to say not enough. [LAUGHTER] But, yeah--

LOWE: I think you've done a-- I think you've done a yeoman's job in representing them.

McDONNELL: Thank you. Thank you.

BREWER: And, Mike, as far as the bill-- I mean, we haven't yet to see if you have opposition here, but as far as letters, there's no opposition and nobody in neutral. The path ahead, have we thought through how we're going to do that?

McDONNELL: Well, I'm willing to work with the committee in, in whatever is the, the easiest path, of course. I'm open to ideas.

BREWER: OK.

McDONNELL: It's just that I, I believe we need to do something this year.

BREWER: All right. Well, be thinking about that. I mean, obviously, if we're in a position where there's, there's no opposition and it needs done, we just got to figure out how to-- how to get there.

McDONNELL: Thank you.

BREWER: All right. And you're sticking around for close?

McDONNELL: Yes, I'll be here.

BREWER: All right. Thank you. All right, we're going to need the first proponent to LB1243. I had a hunch you'd be that first proponent. Welcome back to the Government Committee.

SCOTT CORDES: Thank you, sir. Good afternoon, Chairperson Brewer and members of the Government, Military and Veterans Affairs Committee. My name is Scott Cordes, S-c-o-t-t, Cordes, C-o-r-d-e-s, and I am the Nebraska State Fire Marshal and I'm here to testify in favor of LB1243. As mentioned previously, LB1243 codifies the existence of the Wildland Incident Response Assistance Team, which you'll hear over and

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over again is referred to as, as lovingly as WIRAT, which has been operating since 2013 under the Letter of Agreement that previously was mentioned. WIRAT is comprised of members of the State Fire Marshal and Nebraska Forest Service and this team is designed to help supplement the local resources by providing technical assistance to the local first responders who, who are battling wildland fires. Currently, team activation can be requested by the local incident commander through NEMA. This team operates much like an IMAT team, an Incident Management Assistance Team, in that each individual members are activated based on their personalized skills and matching those with the needs of the local incident commander. As this team serves in a technical advisory role, no emergency declaration is needed for these members to deploy. LB1243 sets out the role of the State Fire Marshal and the Nebraska Forestry departments in the training for and response to wildland fires. It establishes the role for existing staff members to develop rosters, establish standards for operation, training, equipment, and administration of WIRAT. The bill requires the State Fire Marshal to pay the compensation, including overtime, of any State Fire Marshal team member assigned to an incident. Further, the agency shall be responsible for requesting adequate appropriations to pay for the expenses of team members, which can include the training and outfitting of personnel, the rental of equipment needed for an incident, and the actual incurred expenses while serving at an incident. All current team members are already employed in a full-time status with other primary duties, thus team activation often requires large amounts of overtime to pay these costs, as well as the other items listed above, which certainly can vary greatly depending on how weather impacts the wildfire season. With that, I would thank you for your time and consideration on this very important matter and would be happy to answer any questions you all might have of me.

BREWER: All right. Thank you, Scott. The, the position, which essentially is what the amendment is, I would assume that they would work directly for you then to help coordinate and, and manage or who would they actually work for, I guess?

SCOTT CORDES: Yeah, I mean, that's, that's for you all to decide. It's my understanding that the request from Senator McDonnell and through the conversations that I had with the State Volunteer Association, they wanted that person to be staffed in my office so it'd be employed as a full-time employee of our agency and would be designed to coordinate those efforts on a statewide basis and--

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BREWER: It makes sense. Just sometimes what we do doesn't make sense so it's good to hear that-- that's the way you were thinking, too.

SCOTT CORDES: Yeah, I would-- I would offer, Senator, in those preliminary conversations as we worked through the summit and had all those conversations that have been ongoing for some time, had a great working relationship with our forestry folks. John Erixson and I both agreed, wherever the staff personnel ended would be fine as long as it advances the needs of the first responders and helps them we don't care. And so there's, there's no turf war on that. We, we worked well together and want to-- want to do right by the first responders if, if that's the direction we're given.

BREWER: All right. Well, that makes sense. Well, we'll, we'll see if we get Mike up here to close and we'll see what his thoughts are too, but that seems to be logical. All right. Questions for Scott? Any questions? All right. Thank you for your testimony.

SCOTT CORDES: Thank you very much.

BREWER: All right. We are still on proponents for LB1243. Come on up. Welcome to the Government Committee.

PAT GOULD: Thank you, Senator Brewer and Senator Lowe, Aguilar, Senator Sanders, Senator Conrad. Pat Gould is my name. It's, P-a-t G-o-u-l-d. I'm here representing the Chadron Volunteer Fire Department. And first of all, I can give you a little brief history of WIRAT, that, that started after 2002. At the time, I was employed by the State Fire Marshal's Office, and I just retired in August, but I was-- received a phone call from State Fire Marshal Ken Winters, and he asked that I drop what I'm doing that day and go to Gothenburg. Senator-- or excuse me, Ralph Moul, who is with the State Fire Marshal's Office with the training division, he received the same phone call. So we went down there and we worked a couple days on it. Everything was pretty good. NEMA was there, the Nebraska Guard was there with-- Army Guard with the helicopters. And after that, I and Ralph got to talking, we thought, why can't the Fire Marshal's Office come up with the team to assist these fire chiefs with these large-scale wildfires and just help coordinate the resources that's needed. There used-- fire departments are used to working with their own mutual aid-- within their own mutual aid system: neighboring towns, neighboring districts. But when you have a fire such as that, and the ones that we've experienced over the years since, you're bringing in more and more resources from across the state and you need

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to manage that. A lot of times the local fire chiefs, that's beyond what they want to do in, in the first place. They don't want to take the time to, to, to manage that kind of resource, get them called in, schedule them. They don't have time for that and that's where WIRAT comes in. And so this is where it started, why it was started, and now it's grown to this. And I think, you know, the reason is, is that we-- their calls have been increasing for help, fire chiefs and fire districts out there, they realize the importance of it, having somebody help them manage these incidents when it goes beyond a, a 12-hour period or a 24-hour period and stretched for 3 or 4 days or longer. And another thing that this WIRAT does is streamlines the resources to ask for federal assistance. If you want the heavy air tankers, there's hoops you got to jump through. You can't just call and say, hey, send me one. So if you want federal resources, there's hoops you have to jump through. These people are trained to jump through those hoops, so to speak, and get the ball rolling for them to get the federal help.

BREWER: OK. Thank you. Probably the other thing that-- that's critical is the sheer issue of, of time being of the essence. Because if you look at the fires, especially in southwest Nebraska that happened with those high winds, you know, a matter of a few hours was, was a huge difference in how much area got burned. And so having someone whose total focus is on making sure that all the assets are moving in the right direction in a timely manner would seem like a logical way of, of managing this.

PAT GOULD: Well-- and there's certain functions within the incident command system that need to be filled if you're going to do this. And these WIRAT people, they have certain-- certain ones are trained in those functions to help coordinate all this. And they need to be-- you know, they get these task books and they get their levels of training. They've got to maintain them and to certain standards within the, the WNCG. So this, this would streamline that, this would help it and would coordinate it.

BREWER: OK.

PAT GOULD: So I'm in support of the bill and support of the amendment.

BREWER: All right. Let's see if we have any questions for you. Questions? All right. Thank you for your testimony.

PAT GOULD: Thank you, Senators.

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BREWER: Welcome to the Government Committee.

KENNY KRAUSE: Thank you, Senator Brewer and committee members. My name is Kenny Krause, K-e-n-n-y K-r-a-u-s-e. I'm here to testify in favor of LB1243. I'm a representative of the Nebraska State Volunteer Firefighters Association, Nebraska Fire Chiefs Association, and the Fairbury Rural Fire Department. I'm currently serving in District 4 of the NSVFA and on the legislative committee. One of the handouts you have is something I've prepared for the Governor's summit in August of '23. The Fairbury Rural Fire Department has become a very proactive and reactive fire department in recent years. We have obtained training that is somewhat outside the box for our response area, but it's been very beneficial. And by this I mean wildland fire training, most all this training that's been through the Nebraska State Forest Service. I'm here to tell you about a fire that we experienced beginning on April 11, 2023. The fire originated on the evening of the 10th of a very small land management burn when an ember left the burn unit. The next morning, the fire rekindled and grew at an alarming rate. Our initial response was with our mutual aid departments that directly border us, we quickly realized it was going to be more than that initial response could handle. We summoned our whole mutual aid, which is all the fire departments in Jefferson and Gage County. At the time of the fire, I was serving as the fire chief of our district. My assistant chiefs had taken the training through the Forest Service, and a couple of those trainings had been held in the areas this fire would impact. My assistant fire chiefs helped the initial incident commander make the decision to call for WIRAT. WIRAT was activated and dispatched to our location. In the meantime, we aided-- mutual aided Thayer County fire departments and requested for dozers and tillage equipment. The weather conditions that day were conducive to-- conducive to extreme fire behavior and the terrain was very rugged which added to the difficulty. WIRAT played a significant role in suppressing this fire at 1,800 acres. They advised of initial documentation and local declarations that needed to take place as they were making their way to us. And at the same time, they were responding to another fire in north central Nebraska and had just come off of one in northeast Nebraska. WIRAT team members remained in contact until they arrived. And when they arrived, they were able to get the state emergency declaration in order and began to help us determine what resources we may need to order-- may need to order in order to suppress this growing fire in the days ahead. Once the emergency declaration came through, WIRAT helped us to acquire and manage many resources. These included 56 fire departments, 10 state

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and federal agencies, 4 local businesses, and 7 county agencies. They secured dip sites and obtained permission and permits in a timely fashion. They coordinated airdrops with-- and worked with a dozer contractor. WIRAT teams also worked through the night to have IAPs ready, which are incident action plans, ready in the morning for arriving teams. They also had the ability to designate and set up a command post. There's absolutely no way we could have begun to even try to manage an incident of this size without them. We had our work in front of us in the field without having to worry about managing all these resources. Senator, if I might finish, please?

BREWER: Yeah, finish up.

KENNY KRAUSE: I believe that the Nebraska State Fire Marshal's and the Nebraska State Forestry's combined efforts are providing an invaluable service to our local agencies. I support LB1243. Thank you for your time.

BREWER: Thank you. And this is good. I'm glad you sent this because the, the Governor's-- that was the one that they had in Broken Bow last June, was it?

KENNY KRAUSE: Yeah, it was August.

BREWER: August.

KENNY KRAUSE: And there is a typo. I presented this to you before and you called me out on it as I got Air National Guard instead of Army National Guard.

BREWER: That's all right.

KENNY KRAUSE: So I apologize for that.

BREWER: That hurt, but we got over it.

KENNY KRAUSE: I, I didn't realize it this morning and I was driving up there, I saw Senator Brewer, and I'm like, oh, he's going to call me out on it.

BREWER: No, no. I wouldn't do that. All right. Questions for Kenny? All right. Thank you. This is very informative.

KENNY KRAUSE: Thank you.

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BREWER: OK. Next testifier. Proponent.

WESLEY HOCK: Senator Brewer, members of the committee, my name is Wesley Hock, W-e-s-l-e-y H-o-c-k. I'm from the Holbrook Volunteer Fire Department in southwest Nebraska. I'm here of a-- a proponent for this LB1243. I have personally worked with the WIRAT team 6 times over the course of my 5 years of being the fire chief down there. Three have been on my own fires where I've actually been the incident commander. So these guys have been a valuable asset to bring in, wealth of knowledge, huge help to-- as an asset so that we don't-- we can continue to concentrate on fire suppression efforts, so. And that's pretty much kind of what all I got, so.

BREWER: Well, all right, that-- that's fine. I was out at Thedford when we had the Halsey fire and I was impressed at how quickly they set up communications, started coordinating the aircraft, and then did the accountability because we have so many of the grass rigs out there. Part of the concern is that you send them somewhere and put them in the path of something and then not know where they're at.

WESLEY HOCK: Yeah.

BREWER: So getting accountability of where everybody was, unless you see one of these in action, it's hard to appreciate how complicated and, and really dangerous it is if you manage it poorly,--

WESLEY HOCK: Yes.

BREWER: --so. All right. Let's see if we got questions for you. All right. Thank you for your testimony.

WESLEY HOCK: Thank you.

BREWER: Welcome to the Government Committee.

DEVIN LOVGREN: Thank you, sir. Good morning, ladies, ladies and gentlemen of the committee. My name is Devin Lovgren, D-e-v-i-n L-o-v-g-r-e-n. I come from the Fairbury Rural Fire District. Ladies and gentlemen of the committee, I wanted to thank you for giving us the time to speak to you today. As a member of the Fairbury Rural Fire Department and as a volunteer firefighter for almost 10 years, and a Nebraska Army National Guard member of almost 18 years, I've had the opportunity to respond to many wildland fires, not only in our county, but in counties surrounding. Wildland fires have always been something that I've been passionate about, from assisting farmers and ranchers

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and protecting their livestock, homes and livelihood, to responding to the largest wildland fire in southeast Nebraska, the Rock Creek fire there in April of 2013. On that fire, I served as the division's Zulu superintendent, overseeing approximately 4 crews on our division, which spanned approximately 4 miles. Seeing the devastation and the impact this fire had on us and our state, it was surreal and drove home the importance of training high-quality teams like the WIRAT team, and real-world experience that we have dealt with prior to this incident. This also drove home the importance of supplying our IC, the WIRAT, and our chiefs with the tools necessary to save life, property, and from running multiple radios and using cell phones to utilizing runners. There in the beginning it became very evident early on that we had to rely on a multitude of tools and pieces of communication equipment to ensure we kept our firefighters safe. We made do in our situation, but I see the teams on the ground need the support and tools necessary that WIRAT can provide so that we don't put our people in harm's way. By placing WIRAT into law, it solidifies the SOPs and tools necessary to combat wildfires across the state and continues the Fire Marshal's influence that they have on amongst their volunteer and paid fire departments. With that, I'll take any questions.

BREWER: All right. Thank you. Fairbury--

DEVIN LOVGREN: Yes, sir.

BREWER: The first salute I ever rendered after being commissioned as an officer was to an NCO by the name of Eddie Lytle. You don't happen to know Eddie, do you or did?

DEVIN LOVGREN: I do, sir.

BREWER: Eddie, Eddie was one of those guys who was just involved in everything in the community, was-- you know, you have these people that make communities work because they're involved in everything and they, they try and be everywhere to help as much as possible. It just seemed like he was one of those guys and so I thought I would share that with you, the--

DEVIN LOVGREN: Yeah, thanks.

BREWER: --many great memories of Fairbury. OK. Questions?

SANDERS: Thank you.

BREWER: All right. Thank you for your testimony.

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DEVIN LOVGREN: Thank you very much.

BREWER: Welcome to the Government Committee.

STEVE OSEKA: Thank you, Senator Brewer and the committee members. I'm Steve Oseka with the Cairo Fire Department. Steve, S-t-e-v-e, Oseka, O-s-e-k-a. I am representing the Platte Valley Twin Loops Task Force. Once you get your handouts, if you turn over-- after the cover page, it kind of breaks down what we do. We're-- we are a resource that the WIRAT team calls in. I've been on for 39 years with the Cairo Fire Department, been an instructor with the State Fire Marshal Training Division for 30 years-plus. And I'm also the co-leader of our task force team for 4 years. The next down, as you can see, we implement the incident command, kind of like Pat Gould talked about. This is our incident command, how things work. And then on the bottom of that sheet, you're seeing the towns that make up our task force. Senator Aguilar, a lot of these are around your area. And this would-- it takes us roughly 17 departments to come up with a task force to make 6 trucks be able to respond. If you go to the second or third page back, second page, we started in 2021, and we have been dispatched to 11 wildland fires across the state. You can see we went from Banner County and just on down, we went up to Crawford, the Weissert fire at Ansley, North Platte, then we had the Sumner Road at Broken Bow and, of course, Arapahoe, Cambridge, Red Willow. Then last year, the one in southeast part of the state caught on fire. We went to Union, Waconda Lake fire, and then Rock Creek, which would also be Fairbury fire. And then we finished up last year at the Ansley-- Anselmo, excuse me, Anselmo fire, which was Cooksley Fire Complex and I think that thing burned roughly at 40,000 acres by the time we got that stopped. If you look at that list, if you see the asterisk behind, WIRAT was part of them calls. There's only 2 out of 11 that they were not called in. So you can kind of see the importance of WIRAT, what it means for all of the local departments and what it means to us. The last bill-- or page, the Platte Valley Twin Loops Task Force, we support LB1243. We feel WIRAT has the knowledge, experience, and access to media resources to support local volunteer fire departments during large wildland fires where local resources can't. WIRAT assists with the incident command structure, which in larger incidents becomes overwhelming to local volunteer fire departments. The key word in there is assist. They come in and they help us, they do not take over our scene, which means a lot to all the local people. And to kind of summarize, in our opinions, without the resource of the WIRAT team, we feel there could be-- there would be more properly-- property damage and possible loss of life. And the signature is mine and also from

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Terry Webb, which is the Twin Loops representative for on our task force.

BREWER: All right. Thank you, Steve.

STEVE OSEKA: Thank you.

BREWER: And thank you for this, it's well done.

STEVE OSEKA: OK. Appreciate that.

BREWER: It's easy to understand. Let's see if we got any questions for you.

STEVE OSEKA: Oops, sorry.

BREWER: Questions? All right. Thank you.

STEVE OSEKA: OK. Thank you.

BREWER: All right. Additional proponents? I get the feeling you guys are going to run up to score here, but. All right. Welcome to the Government Committee.

JOHN BOMAR: Good afternoon, Senator Brewer and members of the committee. My name is John Bomar, J-o-h-n B-o-m-a-r, and I've been in the fire service, starting my 47th year. I am a Nebraska State Volunteer Firefighters Association board member and a member of the Battle Creek Fire and Rescue Department and a past member of the Madison Volunteer Fire Department, where I served as chief for 5 years and many years as assistant chief. I am here to support LB1243. Until the last several years, wildland, wildland fires were mostly impacting the west and north central parts of Nebraska. Now we are having the big major fires in the south-- southern parts, the eastern parts along the river, and northeast part of the state. One of the biggest reasons we need the Wildland Incident Response Assistant Team is that we have been around since-- they have been around since 2013. The WIRAT has existed only because of-- existed only because of a letter from Nebraska's Governor and letters of agreement between the State Fire Marshal, Forestry Service, and emergency managers. The WIRAT team provides assistance, guidance to volunteer first responders throughout the state to prevent, control, suppress, or otherwise migrate a wildland fire determined by the State Fire Marshal. Volunteer firefighters are under increasing demands due to the frequency, intensity, and magnitude of wildland and open-field fires which have

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burned in all regions of the state. The supports provided to the volunteer firefighters will continue along the state with the Fire Marshal, Forestry Service, and the emergency managers. The point I want to express is when I joined the fire service 47 years ago, just about everyone on the department worked in town or owned their own businesses, were able to respond when called to duty, and our bosses would let us respond because in our smaller communities most likely they were a member of the volunteer department also. Times have changed and bosses are not letting people out of work to go to the emergency calls. And if they do, the volunteer men and women are most likely not getting paid for their time off. We also have more people working two jobs just to make such-- sure their bills get paid. Back in the days, our kids were not playing sports every night of the week and were not traveling all over to play sports or other activities. If LB1243 would get passed, I believe I would-- it would be helping get volunteers back to their workplace sooner. We all understand the cost of this and it would place the responsibility on the Forestry Service and Fire Marshal to request sufficient funds. Thank you to the committee members and thank you, Senator Mike McDonnell, for introducing the bill. Any questions?

BREWER: All right. Thank you for your testimony, John. Let's see if we have questions. Questions? All right. Thank you for your testimony. Welcome back to the Government Committee.

JERRY STILMOCK: Mr. Chair, members of the committee, my name is Jerry Stilmock, J-e-r-r-y S-t-i-l-m-o-c-k, testifying on behalf of my clients, the Nebraska State Volunteer Firefighters Association, comprising over 9,000 members of men and ladies serving as first responders across the state, the Nebraska Fire Chiefs Association, and I've also been asked to sign in on behalf of the Nebraska Association of Resources Districts. Thank you to Senator McDonnell-- once, again, is tip of the hat by Senator Lowe earlier-- for introducing this legislation. I, I want to do a backfill quickly and then try to get through my testimony in a timely manner. The backfill is this, after the Governor asked Fire Marshal Cordes to assemble and hold a First Responders Summit, the one that was referred to already, there were two factions, two, two integrated items: EMS and wildland fires. Of both wildland fire and EMS, a task force was created for each different group. I'm painting the picture because of the intensity of the people that have testified and the people that are back home of how important WIRAT is. We talked about state funding of a special team to go out, to be strategically placed as employees of the state of Nebraska, the way other states do it. We talked about reimbursement

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to the firefighters, the volunteers that are out there when they are called out of their area. We talked about funding for equipment because when you enter the fire service in, in mostly the areas where all of you are sitting, say, Senator Brewer, you wear bunker equipment that is for structural fires, but here you need a whole set. We, we talked about funding for special equipment. They said no universally to all. You know what they elevated to the top? WIRAT. Senator McDonnell was gracious enough to say, you guys work so hard at this-- guys universally included men and ladies-- you work so hard at this, let's, let's do what it is that elevates to the top and this was it. OK. I grew up in south Omaha, proudly stated, but I've, I've, I've grown as a professional since law school and David City, Columbus, and now Syracuse, Nebraska, at Syracuse for over 30 years. Why do I share that? How many times farmers have come to me on the back of a napkin and said we worked out a deal at the local cafe, we are going to sell the farm, we're going to sell 80 acres, going to sell it for \$4,000 an acre. This is how WIRAT was created, right, 2000-- year-- Pat Gould shared with you the story of how it was created. Hey, we need some help. You have expertise, bring around Ralph Moul as well. It elevated to a-- an agreement by the Governor and three agencies. We need help. We need help to orchestrate, to put this in law, to get funding for the agency so they're not-- those, those people that are on WIRAT are, are being paid with, with funding. The other part I wanted to share quickly is-- and it's been said already-- but Lancaster County, Gage County, over 25, 30 departments out there, it's not just western Nebraska. We saw last year with Lake Waconda fire, Plattsmouth, Lake Waconda, the fire-- the wind was so vigorous that it blew across the Missouri River, took that fire from Iowa. Governor Pillen was on the scene and he saw what, what, perhaps, you have seen and the devastation that's caused the unification that comes together with volunteer fire departments. If I may conclude, sir?

BREWER: Keep going.

JERRY STILMOCK: Thank you, sir. The-- there's, there's two components: strike teams and task forces. Those are volunteers in their communities, uncompensated, leaving Fairbury-- or excuse me, leaving Hall County and Howard County and they're going to other areas. So if you picture the area of Cairo traveling to the eastern side of Nebraska for the Waconda, Plattsmouth fires, those people are leaving their communities. They're getting a tip of the hat. We need a coach. We need a captain. We need somebody driving the seat. And that someone would be the designated person as presented by Senator McDonnell in the-- in the amendment. If, if you could-- I'm not going to read it

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because I've expired my time, but a firefighter-- if you may, please? Thank you. I'll keep talking so as not to delay. Thank you for your courtesy. The-- it's a handout from Fire Chief Nathan Flowers out of Gering and he says it best. He says, look, this-- the WIRAT needs a coach, needs a full-time coach. And, and, and through this and the amendment, we believe we get there, the elevation of this item. And, finally, if I may? Senator McDonnell, Senator Brewer as you exit, this will be my last time in front of you testifying, not to disregard Senator Lowe and Senator Halloran exiting, but for Senator Brewer and Senator McDonnell, you guys have come together in the 7 years, the 8 years now that you've been working, and on behalf of all the volunteers in, in the state of Nebraska, thank you to both of you for the-- for the work, the courage, taking on and say how about one more bill and it keeps loading up. Senator McDonnell gets tons of bills. You all have tons of bills. But if there's room [INAUDIBLE] of the willpower, Senator Brewer, to you gentlemen, we appreciate that and, and thank you. Members, that concludes my comments.

BREWER: All right. Thank you for your testimony.

JERRY STILMOCK: Yes, sir.

BREWER: We will just subtract some of Senator McDonnell's close, we added that to yours. [LAUGHTER] All right. Any questions for Jerry? Well, Jerry, thank you for everything you do.

JERRY STILMOCK: Yes, sir.

BREWER: A lot of the good ideas come from you. All we do is help find a path ahead for them. So thank you for what you do for firefighters and we appreciate it.

JERRY STILMOCK: Thank you, sir.

BREWER: All right. No other questions? All right. Is there any other proponents? OK. Anybody here in opposition? Anybody here in the neutral? Welcome to the Government Committee.

JOHN ERIXSON: Thank you, Senator Brewer. Thank you, members of the committee. And thank you, Senator, for bringing the, the bill forward. My name is John Erixson, J-o-h-n E-r-i-x-s-o-n. I'm the state forester and director of the Nebraska Forest Service. I am here testifying in a neutral position. And what I'll share with you today does not represent the, the University of Nebraska, as we are part of the Institute of Agriculture and Natural Resources within the University

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of Nebraska. As you've heard, we've seen a number of fires where the fires spread south and east across the state. It used to be more of a western centric problem. It's clearly a statewide problem at this point. There's a couple points I'd like to make about the graphs in there. Nebraska Forest Services tracked wildfires in the state for the last 60 years. A little over that now. And in the first 30 years of those-- that tracking, a large fire season would happen every 15 years. So twice in that first 30 years, and by definition, a large wildfire was a fire, fire season where there were over 100,000 acres consumed. In the last 30 years, there's been 7 occasions where we've had large fire seasons. Those fire seasons are getting closer together. They're moving from where they were and spreading across the state. The WIRAT team, some of my staff serve in a capacity as, as members of the WIRAT team. Those individuals are, are highly trained individuals as well as the folks from the Fire Marshal's Office. They, they do operate under standard of the National Wildfire Coordinating Group with the idea that this is-- this is the national standard for this. And these folks are, are gaining qualifications and working forward to gain skills. This does sometimes require out-of-state assignments and those folks do travel to those different locations and those folks also travel for training opportunities. Certain classes that are within that program are only offered once or twice a year and it may be in Colorado or it may be Virginia this year so there is travel associated with that. Those folks take those courses, they work through those task books to gain the skills that are necessary that they bring back to Nebraska. So that is a critical component of, of what those folks are doing. So with that, I'll just stop there and see if there's any questions for me and thank you for your time.

BREWER: Thank you for your testimony. All right. Questions for John? All right. Thanks for the handout. All right. Any additional in the neutral? If not, we'll invite Senator McDonnell up for a close.

McDONNELL: Thank you, Senator Brewer. You asked a question earlier about-- if you look at AM2620, line 9, that does put this bill underneath the Fire Marshal so that new person would answer to the, the Fire Marshal. Appreciate everyone that, that testified today. All the work they do in their service to our state trying to find a, a path forward. For this bill, I'm willing to work with the committee. I've never seen Dick Clark look so good, just to say that, but. Again, this is my last time bothering this committee so I do appreciate working with you over the years so thank you.

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BREWER: All right. Well, thank you for your close. Let's see if we got any questions. I'll get with you and we'll, we'll figure out how we want to move forward here and, and we might need Dick to help us with the conduit and so we'll work that through. But thank you and--

McDONNELL: Thank you.

BREWER: --let me close with reading in our letters: 7 proponents, zero opponents, zero in the neutral. And that will close our hearing on LB1243 and we'll get reset to invite up Senator Wayne for LB1404.

CONRAD: Hello, Senator. Goodbye, other Senator.

WAYNE: No, we'll be there in a second.

SANDERS: The rest of them are going.

WAYNE: Where are you going? What? What?

SANDERS: There's no one left.

BREWER: I'm, I'm not going anywhere.

CONRAD: Thank you.

BREWER: Just stretching my legs. We were a little worried we were going to have to use one of those medical experts to revive you. You were a little rough back there.

WAYNE: Yeah, you know. Well, good afternoon, Chairman Brewer. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e. And I am not a firefighter, although I am a burn boss. I have an official letterman jacket that says burn boss on it and it is official. No, I'm joking. This is a very, very simple bill in the sense that I'm going to ask you not to advance it. They filled all their seats so I have nothing. It's a shell bill. We're going to use it to-- what do you want to do with it?

BREWER: We'll do whatever you want me to do with it, you just let me know.

WAYNE: OK, we'll make it a committee priority and we'll, we'll gut it.

BREWER: Well, you give him an inch.

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WAYNE: So you guys have a great day. There should be nobody here to testify in opposition or in favor or neutral because we are not going to advance this bill and--

BREWER: And you're waiving close?

WAYNE: I-- you know, this is my last time here. I started on this committee with Lowe and Brewer. It was a great time. We, we did great things. Halloran, were you here? You weren't here on the first year. The first 2 years you were not here. Yeah, it was a much taller committee. [LAUGHTER]

HALLORAN: But lower IQ.

WAYNE: Lower IQ is true but that was because Dick Clark was counsel.

BREWER: So sensitive.

WAYNE: So you guys have a great day.

BREWER: All right. And I need to read in letters. We had zero proponents, 1 opponent--

WAYNE: We had an opponent? [LAUGHTER]

BREWER: I got a letter.

LOWE: It's my considered duty.

WAYNE: No, we can't do consent now.

BREWER: Zero in the neutral. That'll close our hearing on LB1404 and we'll invite up our final testifier.

SANDERS: She's not here. Did we call Senator Machaela Cavanaugh?

NEAL ERICKSON: She was the first testifier.

SANDERS: Oh.

BREWER: That was her aide that was--

SANDERS: OK, we switched.

BREWER: We have one of our own as the final presenter. Welcome to your committee.

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CONRAD: Thank you so much, Chair Brewer, 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 proudly represent north Lincoln's Fighting 46th Legislative District and I'm here today to introduce LB1191. OK. Simply put, LB1191 repeals what I think has become a very controversial aspect of our state statutes. So let me give you the, the cliff notes version on it. In 1977, a very good year, the year that I was born, this Nebraska Legislature and this Government Committee decided to pass out a bill that created a legislative grant of authority to the Attorney General's Office to issue Opinions on the constitutionality of statutes. That became Section 84-215. I do have copies of that for the committee if they'd like to, to have those handy since the bill itself is just a straight repealer so it might be a little bit easier to follow along if, if you have a copy of, of the statute as it stands today. So I never thought much about this statute or heard much about this statute until pretty recently. It has been used, what I consider to be, appropriately and sparingly over the years. And let me give you a recent example that kind of illustrates how this measure works. So you might remember, there was a lot of discussion a few years ago about whether or not Election Commissioners needed to be appointed or elected. And you dealt with that in the Government Committee that moved through the Legislature. There were all kinds of debates about it. And, ultimately, then Attorney General Doug Peterson said, hey, I think your current statutory scheme is unconstitutional. And so then Governor Ricketts took some action in reliance, thereof, that triggered the litigation to test that existing law to figure out whether or not the Attorney General was right and whether or not that current scheme regarding whether or not Election Commissioners were appointed or elected was valid. That went all the way up to the Nebraska Supreme Court. And the Nebraska Supreme Court said, hey, Mr. Attorney General, you're wrong. The current law is right. And so that's a good example of how this provision of law is supposed to work. Where it got really murky was over the last year. So you'll remember in August of 2023, Attorney General Hilgers issued a, perhaps, unprecedented and very controversial Opinion, calling into question the ability of the Legislature to exercise legislative oversight over our state's two largest and most troubled institutions: the Department of Health and Human Services and the Department of Corrections. And because of a long historical record and a persistent ongoing need that demonstrated these agencies had involved in widespread waste, fraud, and abuse that harmed taxpayers, that fleeced taxpayers, that harmed vulnerable Nebraskans, including little kids in foster care. Because of this pattern and practice of serious big

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government abuse, the Legislatures that came before us worked really hard and really carefully over a period of many years to put together additional tools of legislative oversight, embodied through the Office of Inspector General for Child Welfare and for Corrections. And I know about these efforts, particularly in relation to the Inspector General for Child Welfare, because I was part of the Legislature in my last stint of service when those debates and deliberations were playing out. And this isn't academic, colleagues. And what the Attorney General's Opinion fails to mention is that there were foster children being left unattended overnight for hours, covered in feces and urine because of mismanagement and a lack of oversight on behalf of HHS. There were ongoing pattern and practice of shenanigans with abusing taxpayer dollars and even fighting against then Auditor Mike Foley in trying to keep track of those dollars. It was because of this ongoing mismanagement that the Legislature had to step forward, because then the Attorney General and the Executive Board did nothing, and the executive branch did nothing to remedy these abuses that were hurting our most vulnerable and our taxpayers. So we pulled together stakeholders from across the political spectrum, across the state. We looked at best practices in Nebraska and in our sister states. And as part of a very deliberative effort, these measures moved through the Legislature to create these offices of Inspector Generals. They had the judicial branch involved in those discussions. They had county attorneys involved in those discussions. Those measures passed resoundingly. The technical aspects of how we set up our Inspector Generals' Offices were appropriate, and they've worked well in the instances of child welfare for over a decade, and the instances of Correctional Inspector Generals for a little less than a decade. And let's be clear about what these folks do and what they don't do and not get into the hyperbole that's baked into the Opinion. They don't interrupt law enforcement investigations. They don't and they haven't. That's the law school hypothetical. What they do do is they try and figure out and report to us about systemic problems when it comes to waste, fraud, and abuse and when it comes to death and harm. And how do they report on that? Usually they publish an annual report once a year. Every now and again they'll do a special report. But they typically effectuate their work by publishing an annual report on child welfare issues and on Corrections issues, respectively, that you're familiar with that's published on our website that's distributed each year and that generates usually some media attention about what's going right and what's going wrong in those departments. And because it was such an inconvenience to have to suffer through a day or two of bad press about big government failures, the Attorney

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General weaponized and misused his legislative grant of authority under 84-215. And now we have the worst of both worlds. He's issued what I believe to be a poorly reasoned political missive, attacking the undeniable power of legislative oversight that we did not give to ourselves, that is granted to us by the people in the Nebraska Constitution through both the provisions establishing the Legislature and the separation of powers, and granting us control over state institutions, and granting us specific control over documents and reports from executive branch agencies. He's attacked these undeniable clear on their face grants of authority for us to exert control and oversight over troubled institutions. And so rather than standing up for the Legislature, the executive branch seized upon this Attorney General's Opinion and refused to follow existing law. And not only did they refuse to follow existing law when it comes to the Inspector Generals for Child Welfare and for Corrections, over the last many months, that refusal, that defiance, that lawlessness, has spread even beyond the Attorney General's Opinion to the Ombudsman's Office, which has been in place for over 50 years in Nebraska and has been supported by Attorney Generals' Opinions in the past. So it's really important as we talk about these issues, and I want to be clear, we have to divorce ourselves from the people in these offices currently. This isn't about whether or not I like Attorney General Hilgers because, in fact, I do. This isn't about whether or not I like Governor Pillen because, in fact, I do. This is about whether or not we have fidelity to our constitution, fidelity to the people, fidelity to the institution which we took, took an oath to protect and serve and whether or not we will utilize all tools that we have available to protect the taxpayers and vulnerable people. But instead of standing up for ourselves and challenging that Opinion and, by the way, the Attorney General's missed his window to force that in a court of law under 84-215, our executive branch and, in some instances, our judicial branch has simply refused to comply with any oversight as required under existing law. So that has sparked a host of legislative remedies and solutions. Senator Wayne has multiple bills on this topic. Senator DeBoer has multiple bills on this topic. Speaker Arch and the executive branch have multiple bills on this topic. I've brought forward a package of four bills on this topic: one to remove this legislative grant of authority, two that are before the Judiciary Committee to say, hey, if we're not going to have any legislative oversight in this state, then let's open up the courts for everyday citizens to go in and seek justice when they're harmed by big government, and address taxpayer standing and remove defenses of immunity for big government bureaucrats. Now, I think those are

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unlikely to move forward but they're important remedies that should be on the table. And I also have another measure to reform the Office of Inspector General without conceding too much. I opened on that yesterday in the Executive Board. It's my understanding that the Executive Board will not be moving forward with any of these measures, but instead will pursue a legislative task force to provide a broader lens and a bigger look at legislative oversight kind of writ large. And I appreciate and understand why the Speaker and the Exec Board has decided to do that. But let me be clear with where we are today. So now, after over 6 months of no oversight, as required under law, we've developed a, quote unquote, MOU, a memorandum of understanding, which is nothing more than mother may I oversight, where the Executive Branch has told us-- has told the Legislature how they're going to comply with current law. Think about that for a minute. Let that sink in for a minute. And let me have another point sink in here. The Attorney General's Opinion and the MOU, neither carry the force of law. Do you know it does carry the force of law? The Nebraska Revised Statutes as passed by this body that have the presumption of constitutionality and that are the law of the land until a court says otherwise. We are in a dangerous, precarious, and unprecedented situation because of abuse of this legislative grant of authority. At the very least, we should remove it. The Attorney General will retain the authority to issue Opinions in other regards, but it will remove the mess that this has created. I'm happy to answer questions and I'll be here for close.

BREWER: OK. Thank you for your testimony. If we look at the IG versus the Ombudsman--

CONRAD: Yep.

BREWER: --their roles, how, how ideally would they function?

CONRAD: Yeah, that's a great question, Senator Brewer. So the Ombudsman's Office was created years before I was in the Legislature last go around, but was kind of part of a movement to raise offices that assisted citizens in navigating state government systems and structures. So it was a pretty popular movement, maybe in the '60s or '70s, to develop these Ombudsman systems. So that's what we had in Nebraska for about 54 or 55 years. So what this office is meant to do is to help people who are incarcerated or who are having trouble getting public benefits or who are having trouble with unemployment insurance to kind of figure out how to get answers on how to navigate state government. They additionally, from time to time over the years,

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could kind of say, hey, there's, there's something kind of going wrong in Corrections or there's something kind of going wrong in Health and Human Services. And from those kind of case-- that kind of casework that they would conduct, sometimes they would help to connect the dots for the Legislature on broader issues. And you might remember Marshall Lux doing this as part of prison reform discussions over the years, many years ago. So that's kind of what the Ombudsman's Office was created to do, kind of how it operated, and then knowing that that had been a successful means for both citizen engagement and legislative oversight. I think it was in 2011 and maybe 2015, respectively, after years of study, the Legislature came together and said, hey, let's create these Inspector Generals under the Ombudsman to look deeply at child welfare and to look deeply at Corrections. So then that's how we have those offices under the offices of-- under the Ombudsman who are conducting that legislative oversight for us. Those are all subject to legislative oversight, just like other agencies within the Legislature, whether it be research or performance audit or what have you. But that's kind of-- that's a thumbnail sketch of how we got to where we are.

BREWER: And were-- was there just one IG for the Child Welfare and one for Corrections?

CONRAD: You got it.

BREWER: OK.

CONRAD: Yes.

BREWER: All right. Questions? Questions? Yes, Senator Hunt.

HUNT: I don't have any questions yet, but I feel like I was just in, like, a law school class or something. I'm, like, OK. Anyway, thank you very much for the introduction, Senator.

CONRAD: Much to his credit and graciousness, Attorney General Hilgers and I were in a law school class debating this earlier this fall and I think it was really well attended and I give him a ton of credit for showing up and having the courage of his convictions to bring forward his ideas in that forum. And I appreciate him coming forward to be here today and I'm glad that we were able to accommodate his, his schedule in that regard.

HUNT: Thank you.

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CONRAD: Yeah.

BREWER: All right. Additional questions for Senator Conrad?

CONRAD: Oh.

BREWER: All right. You're going to stick around for close?

CONRAD: Down here.

BREWER: OK. Good. All right. We will start with proponents to LB1191. You're, you're a proponent?

HILGERS: Yes. You said proponent, right?

BREWER: Proponent.

HILGERS: Yeah. OK. It's still the order, proponent, opponent--

BREWER: OK. Well, welcome to the Government Committee.

HILGERS: Thank you, Chairman Brewer, members of the Government, Military and Veterans Affairs Committee. My name is Mike Hilgers, M-i-k-e H-i-l-g-e-r-s. I currently serve as the Attorney General. I'm here to testify in support of LB1191. Maybe, maybe start with a couple notes of gratitude. I appreciate the committee's flexibility on the hearing schedule today. I-- and, in particular, Senator Conrad. I thank Senator Conrad for bringing this particular bill. I also appreciate her engagement on the issues. I'm, I'm here-- I will testify in my-- in my comments about the bill. I'm happy, though, to answer any questions about our Opinion or about any-- some of the other issues that Senator Conrad raised. But I do appreciate her engagement here, her engagement at the law school, as she's often said a steel-- sharp as steel. And I think that's the case in this context. So the-- what this bill does is it strikes a particular provision that I think had good intent in Chapter 84 that I think there was a good reason to bring it. But I think as-- I absolutely agree with Senator Conrad that it has created a mess. So in the absence of Chapter 84-215, this office, the Attorney General's Office has the constitutional authority to be the state's lawyer. And that includes, among other things, the ability to sue or handle the defense of lawsuits and also provide Opinions to state agencies, state senators. Those Opinions in the absence of the statute or after-- or with the statute are not binding. They're not binding. They're just what any lawyer would do in any context which is to provide the best advice

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that can be followed or not followed by any particular entity, the client. What Chapter 84 does, this 215 section creates a structure to really force particular constitutional issues into the court. And it kind of makes some sense if you read it and it-- what it says is it says, hey, if this-- if the Attorney General issues an Opinion and-- that a particular statute is unconstitutional and that agency based on that Opinion says that we're not going to follow it, the Attorney General within 10 days has to file a lawsuit and it doesn't just file a lawsuit against the entity. So in this case it might have been the Department of Corrections, it could be HHS, it could be any entity, it can be-- it could also be against the Secretary of State, and it has to be done within 10 business days. And there's some superficial logic to that because it's like, hey, we want these courts-- we want these issues to be decided in court. The statute itself, though, has made a, a significant mess of things and I think in multiple ways and I'll give you just a couple for instances with the time I have remaining.

BREWER: Just keep, keep rolling. You're good. Don't worry about time.

HILGERS: One, one is that it is the virtue of the fact that it gives us the option to sue the Secretary of State. The Secretary of State is very a unique-- it's a unique feature of law. If I have a problem with Senator Lowe, I would sue Senator Lowe. If, if Senator Sanders is a bystander to the issue that we have and in no concept of law would I sue Senator Sanders because Senator Lowe is the one who had-- sort of pick on you-- is, is the one who's doing the action that I think is unconstitutional or wrong. So I should sue him, he's the one who controls his acts. To sue the Secretary of State is a sort of an anomaly that you don't see anywhere in law, and so for us to sue the Secretary of State, who is a stranger to this action so take the IG context, Secretary of State is not doing anything with respect to the IG, just a constitutional officer who one, one day might wake up to a lawsuit from my office with which he might agree with. That's one anomaly. A second-- and Senator Conrad has sort of touched on this in her-- in her opening remarks is what does it mean to be in reliance of the Opinion? We issue Opinions all the time. Does someone actually rely on the Opinion or not? The administration, as Senator Conrad pointed out, barred access to the Ombudsman's Office. Our Opinion didn't say anything actually about the Ombudsman's Office. Did they rely on our Opinion to do that? We use the statute to sue the Department of-- or Secretary of State on LB50, the retroactivity of a particular portion of a bill passed by the Legislature last year. In that context, we had a specific letter from the head of the Department of Corrections that said: In reliance on your Opinion, we are not

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going to enforce this statute, which then prompted the lawsuit. A third way is that the timing is very-- it's very-- it's both too short and also sort of oddly triggered. You have 10 days-- business days from the time the Opinion is issued, not from the time that someone tells you they're not going to refuse-- they're not going to follow the statute because of your Opinion. So if you have 10 days and on day 9, Senator Hunt decides to tell you that you're not going to follow the statute-- she's not going to follow the statute, I have a day to file a lawsuit. That is anomalous. It creates additional litigation, additional expense in the context with the Legislature had there been a lawsuit, had we sued, or had there been a lawsuit, there might have been additional counsel that would have been hired. That's the case in the Secretary of State's Office and additional taxpayer funds. If this statute repeals, it will go back to the way it used to be, which would enable parties to settle these disputes in court and make rational decisions based on their various rights. In the absence of this particular bill-- sorry, this statute, if someone thinks that the IG-- which could happen today, but if someone thinks that the Department of Corrections or someone else is not following the law, they can sue. The Department of Corrections is then in position to resolve that lawsuit-- of course, we would represent them, resolve it, change their behavior, not the Secretary of State or some other party. So we-- I support and I'm a strong proponent of this bill because it gets rid of what I agree is a very messy statute and sort of returns us to the status quo entity, which I think is a much better policy. For the record, there's no other state that we're aware of that has this kind of provision. With that, I'm happy to take any questions about this or any, any other part of Senator Conrad's comments with the Opinion.

BREWER: Well, thank you, Mr. Attorney General, for enlightening us there. I-- understand my pause when you came up as a proponent to the bill because she had politely slapped you around pretty good in the-- in the beginning and I just thought that maybe that you might not be in support of that. So to find out that both of you are on the same sheet of music is, is kind of refreshing. All right. Questions for Mr. Attorney General? All right. Thank you for your testimony--

HILGERS: Thank you.

BREWER: --and coming in. All right. Any additional proponents? Looking back there. Anybody here in opposition? Anybody here in the neutral. All right. Senator Conrad, come on back. I need to read the letters here. We have 6 letters in support, 3 in opposition, zero in the neutral.

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CONRAD: OK.

BREWER: Welcome back to the Government Committee.

CONRAD: Thank you. Thank you so much. And you never know what's going to happen on any given day here, so. I had the opportunity to talk with the Attorney General briefly in the Rotunda after I introduced my bill and he said he thought it was intriguing and that he would look deeply at it. I knew-- I knew he would because I know he does his due diligence and I didn't know up until today exactly which way he was going to come in in regards to the legislation so I am happy to have his support. And I do want to reaffirm what you already know to be true based upon your relationships in your service in public life as well. I have always enjoyed a warm relationship with the Attorney General before I rejoined the Legislature when he was a member of this body. He always took time to listen to the concerns and ideas that I had as a civil rights leader. We didn't always find agreement in those conversations, but I appreciated both his candor and his consideration. Since I have rejoined the Legislature and since he has taken Office of Attorney General the same holds true. We have had a host of private and public conversations about this and other matters that are impacting our state and I appreciate it. I appreciate his commitment to public service. I appreciate the talent that he brings as a public servant as a-- and as a lawyer. And I know he's not afraid of having a robust dialogue on important, complex or controversial issues which is part of our work together and we can still maintain a relationship even though we have strong and zealous advocacy on any different side of any different issue. It's good to be singing from the same page in regards to the repeal of this antiquated statute which has caused a lot of murkiness and confu-- and confusion. And just so that you know as well, we've got a buddy act going on in Judiciary Committee as well where the Attorney General, myself and many others, including the county attorneys and the criminal defense attorneys, are all working together to figure out ways that we can increase access to justice, particularly in rural Nebraska. So even though we have sharp and principled disagreements in some instances, we can and we should always find ways to work together which is exactly what we're doing and which embodies the Nebraska way. So I was proud to have a good conversation on this topic. I'm proud not to have to talk about the OIG Opinions in committees anymore. I think I've said my piece on that. And I think the task force that Speaker Arch has put forward will rightly pull together these different areas of oversight that have been put out there over many years, figure out

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ways that we can make them as strong as possible so that we can continue our work and move forward.

BREWER: All right. Well, all I know is, is you have incredible persuasive skills because after your opening--

CONRAD: Tell my kids that. If only they'd believe that.

BREWER: --after that opening, I was a little shocked that he came up and was so, so agreeable but, hey, hats off. All right. Questions for Senator Conrad? Yes, Senator Lowe.

LOWE: We just passed a note between us that my head was swimming because of the two lawyers [LAUGHTER] at this and-- but it's good to see a kumbaya year.

CONRAD: Yes, it is and I was teasing the Attorney General and some other folks, I said we should really at least get CLEs for this. If this isn't a continuing legal education for all of us, I don't know what is. But, nevertheless, yeah, sorry to, to get kind of in the muck on the legalese on it but I think you got the gist of it. I, I think, Senator Lowe, you're doing just fine.

HALLORAN: It was fun to see that swirl above your head.

BREWER: OK. Other questions for Senator Conrad?

CONRAD: It's 75 degrees out, everybody wants to get out of here. Yeah.

BREWER: When we-- when we jump over into Exec, let's, let's talk about--

CONRAD: OK.

BREWER: --some ideas on how we, we, we get it moving.

CONRAD: Very good. Thank you so much.

BREWER: All right. With that, we've read in our letters, that will close our hearing on LB1191 and close our hearings on the day and we'll--