

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 18, 2025

HANSEN: Good afternoon and welcome to the Executive Board. My name is Senator Ben Hansen. I represent the 16th Legislative District in Washington, Cuming, Burt and parts of Stanton Counties, and I serve as chair of the Executive Board. I'd like to invite the members of the committee to introduce themselves, starting on my right with Senator Clements.

CLEMENTS: Rob Clements, District 2.

McKINNEY: Terrell McKinney, District 11.

BALLARD: Beau Ballard, District 21.

BOSTAR: Eliot Bostar, District 29.

IBACH: Teresa Ibach, District 44.

FREDRICKSON: John Fredrickson, District 20.

ARCH: John Arch, District 14.

JACOBSON: Mike Jacobson, District 42.

HANSEN: Also assisting the committee is our legal counsel, Benson Wallace, our committee clerk, Natalie Schunk, and our committee pages, Kathryn and Jacob. A few notes about our policy and procedures. Please turn off or silence your cell phones. We will be hearing two bills, and we will be taking them in the order listed on the agenda outside the room. On each of the tables near the doors to the hearing room, you'll find green testifier sheets. If you are planning to testify today, please fill one out and hand it to a page when you come up to testify. This will help us keep an accurate record of the hearing. If you are not testifying at the microphone, but want to go on record as having a position on a bill being heard today, there are yellow sign-in sheets at each entrance where you may leave your name and other pertinent information. Also, I would note if you are not testifying but have an online position comment to submit, the Legislature's policy is that all comments for the record must be received 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 and give them to the page. We use a light system for testifying. Each testifier will have three minutes to testify, depending on the number of testifiers per bill. When you begin, the light will be green. When the light turns yellow, that

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means you have one minute left. When the light turns red, it is time to end your testimony and we will ask you to wrap up your final thoughts. When you come up to testify, please begin by stating your name clearly into the microphone and then please spell both your first and last name. The hearing on 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 neutral capacity. The introducer of the bill will then be given the opportunity to make closing statements if they wish to do so. On a side note, the reading of testimony that is not your own is not allowed unless previously approved. And we do have a strict no-prop policy in this committee. So with that, we will begin today's hearing with LB298 and welcome Speaker Arch.

ARCH: Good afternoon, Senator Hansen, members of the Executive Board. For the record, my name is John Arch, J-o-h-n A-r-c-h, I represent the 14th Legislative District in Sarpy County, and I'm here today to introduce LB298, which deals with legislative oversight. Clearly, the Nebraska Constitution sets forth the Legislature's inherent power to provide short-term and long-term oversight in matters related to the operation of state government, which, by the way, are enumerated in, in Section 19, 25 and 46 of the bill before you. But what is legislative oversight and what is its purpose? First of all, we aren't police. Our inspections, inquiries, studies, information requests are not part of a criminal investigation. Rather, those tools of oversight are necessary functions of the Legislature to carry out its duties, and you will hear this over and over and over again, which is to legislate and to appropriate. Our two duties. We can't do either without information. The intent of LB298 is to lay the foundation for more complete and robust legislative oversight, allowing us to have all the information necessary to make informed decisions, legislating and appropriating. So why are we addressing this issue now? I would like to provide a little history of-- for the record. On August 16, 2023, Attorney General Mike Hilgers issued an Opinion calling into question the constitutionality of the offices of both the OIG for child welfare and the OIG for the correctional system. In response, both the Department of Health and Human Services and the Department of Corrections stopped providing critical information to the OIGs, as well as the Ombudsman's Office, preventing these officers from carrying out their statutory duties and impeding the Legislature's constitutional authority to provide oversight. I do realize the AG's Opinion is just an opinion, and there were some strong differences of opinion regarding the Legislature's response to this situation. But the situation was what it was and it was necessary to find an

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immediate path forward. While the initial focus was on the OIGs, it became obvious that the issue of legislative oversight is complex and multifaceted. Our oversight function involves both-- involves various entities and individuals, including the public counsel, both inspectors general, the Legislative Performance Audit Office and two standing committees, Judiciary and Health and Human Services, all of which are not directly related or organizationally coordinated and have some overlap in scope of duties. After much discussion in the way of different options, it was ultimately decided that instead of rushing to fix the IG issue, possibly creating more unintended consequences, an in-depth study of the Legislature's oversight function would be appropriate. And that study took the form of LR298, which established the Special Legislative Oversight Committee, which included all members of this Executive Board, as well as five additional legislative members. Additionally, on February 14th, a little more than a year ago today, then chair of the Executive Board, Senator Aguilar, myself as Speaker, and Governor Pillen, entered into a memorandum of understanding. The MOU provided for the temporary continuance of the executive branch agencies to share information with our oversight offices, while the Legislature looked for a more permanent solution through LR298. I believed that what we had been presented was an opportunity, and LR298 gave us the opportunity to take a serious look at the Legislature's oversight structure. LR298 included roundtable discussions among the committee members, a presentation from the Levin Center for Legislative Oversight at Wayne State Law School, and many, many conversations with our current public counsel, Julie Rogers, our current legislative auditor, Stephanie Meese, our current OIG for Child Welfare, Jennifer Carter, and our current OIG for Corrections, Doug Koebernick. And I want to thank those individuals for their time, their input and their candor during these conversations. The result is what you have before you in LB298. The goal of LB298 is, of course, to address the issues raised in the AG's Opinion, but also again to lay down a foundation and build an oversight structure that is logically organized, unquestionably constitutionally sound, and maintains and grows legislative oversight in Nebraska. So how does LB298 accomplish these goals? I want to give a quick overview about what it does. By the way, the pages will be passing out a-- this isn't a prop, this is a handout. The pages will be passing out a diagram that I'll be, I'll be referencing here, if you would refer to that, please. First of all, the, the bill would create a new legislative division, the Division of Legislative Oversight. And the diagram will indicate that. It would allow for the appointment of a Director of Legislative Oversight, the Legislative Audit Office, the Office of Inspector General of Nebraska Child

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Welfare and the Office of Inspector General of Nebraska Corrections [SIC] System would be moved under the umbrella of the Division of Legislative Oversight. Second, the bill would create the Legislative Oversight Committee as a special legislative committee to oversee all aspects of the division of the legislative oversight and perform the necessary duties as provided for in the Legislative Performance Act, the Office of Inspector General of the Nebraska Child Welfare Act and the Office of Inspector General of the Nebraska Correctional System Act, including approving annual work plans, approving key performance indicators, and receiving quarterly briefings from the Director of Legislative Oversight. The committee would be composed of the Speaker of the Legislature, the chairperson of the Executive Board of the Legislative Council, the chairperson of the Appropriations Committee, chairperson of the Judiciary Committee, HHS Committee, and four other members of the Legislature appointed by the Executive Board. The chairs of both Judiciary, Health-- and Health and Human Services have been added as part of the Oversight Committee because it is within both of these committees that the action of legislative oversight takes place. It's not the intention that because there is an Oversight Committee, standing committee chairs are no longer responsible for those issues under their committee jurisdiction. Through their investigations, the OIGs will raise the issues that both the Judiciary Committee and the Health Committee then pursue resolution. In fact, there is language in LB298 that provides for the chair of the Revenue Committee and another Revenue Committee member to temporarily serve as nonvoting members of the Oversight Committee in issues involving performance audit of tax incentives because the Revenue Committee has jurisdictional oversight of incentives. Third, under the bill, the Legislative Performance Audit Special Committee would be terminated. The bill does contain the emergency clause, so, should it pass, it would be my intention that the current Performance Audit Committee members become the new Oversight Committee with the two additional chairpersons, positions of Judiciary and Health. Of course, that would ultimately be the decision for this board. LB298 is truly transformative legislation. When the OIG for Child Welfare position was created in 2012, it was in response to a rocky attempt, to put it mildly, to privatize the child welfare case management system. It was the same case in 2015 with the creation of the OIG for Correctional Services, a response to incidents pointing to the dysfunction in Corrections. In a letter of support on a related bill introduced last year, long-time former Ombudsman Marshal Lux stated that when the OIG for Child Welfare was established, it was placed under the supervision of the Ombudsman as, quote, entirely a matter of convenience. He went on to state that had it been known then that this arrangement would

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eventually create a transformational constitutional issue for the Ombudsman's Office, his quote, Something else would have been done. LB298 does that something else by decoupling the OIG from the Ombudsman or public counsel and moving those positions under the supervision of the Division of Oversight and ultimately the Legislative Oversight Committee. The AG's Opinion criticized our IG structures having no legislative oversight. I believe that this addresses that criticism. Fourth, LB298 also proposes to move the Performance Audit Office under the Division of Oversight as well. The OIG offices and the Performance Audit Office are similar in that they do not play the role of an enforcement agency, but rather look for programmatic and systematic inefficiencies in our state agency and agency programs, and provide us with their findings so we can make informed policy decisions. Instead of having three system-related oversight offices exist side by side answering to two different committees, it made sense to have them under one division. And again, this bill is to create a structure of oversight with strong legislative control. Once this structure is established, it's very possible in the future, other oversight issues may be identified. We heard a bill, for instance, I think it was last week, on rules and regulations. Rules and regs could be included in something like this or state contracts. The Legislature could add some things to that legislative oversight duties and could be housed in this division. So as you can see from the diagram that's been handed out, the Ombudsman office is not under the oversight division and is a standalone division, while the Ombuds office does provide oversight and is statutorily charged with many of the same functions as the OIGs, including conducting investigations and making recommendations, is-- it is at its core more citizen-centered. It works to protect citizens from administrative misconduct and mismanagement. This office has been in existence since 1971 and it is important to the citizens of this state. It should be preserved as a standalone entity in order to properly carry out its important mission without the distraction of other oversight offices, so it would remain a division of the Legislature. Having said that, you will also notice on the chart that there is a dotted line connecting the Ombudsman's Office to the oversight division. This is to recognize the overlap that happens in matters of legislative oversight. In LB298, it's clarified that these different offices communicate with each other to determine the next necessary steps in an investigation. Does it more properly lie within-- with the an OIG? Is it a whistleblower situation that lies with the Ombudsman? Those are the questions. And that communication can involve sensitive information. That's why in LB298 language is included that tightens up the sharing of confidential information and

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provides for penalties for unlawful disclosure of confidential information. Fifth, additional concerns raised by the AG Opinion included the OIG's, quote, unfettered access to computer systems, the ability to interject in law enforcement investigations and the authority to issue subpoenas. The bill addresses these issues. It removes language mandating direct computer access for the OIGs and specifies that all information must be provided in, quote, the most efficient and timely manner, which could include secure electronic access. Child welfare, Corrections and the Office of Probation all use different software. To specify in statute the manner in which information is shared would greatly limit our ability to be flexible when information databases evolve. It's envisioned how information will be received in, quote, the most efficient and timely manner will be determined by the OIGs and the relevant agency or division, likely through a separate document, an information-sharing agreement to memorialize how information is to be shared. I would anticipate there would be three separate information sharing agreements, one between the OIG for Child Welfare and DHHS, one between the OIG for Child Welfare and the juvenile probation, and one between the OIG for Corrections and the Department of Corrections. This would be a memorializing of where we are starting in the sharing of information. It would be the, it would be the how that we're going to be-- that we would agree to in providing the information. Necessary for three because of three separate software: N-FOCUS for DHHS, NICAMS for Corrections, NPACS for Probation. The information sharing agreements will recognize these differences, will spell out exactly how the information is to be shared in an efficient, timely manner while maintaining confidentiality. These information-sharing agreements will not only provide certainty but also flexibility should adjustments need to be made in the future. I think that we want to avoid misunderstandings once this bill is passed, if it's passed in this form. And the, and these, these agreements would be developed while the bill is under discussion so that we can end this discussion and move on. With respect to law enforcement investigations, current statute states that law enforcement shall provide relevant information to the OIGs, and that the OIGs may suspended investigation upon request of a law enforcement agency. LB298 flips these shalls and mayas to state that law enforcement may provide information, the OIGs shall suspend an investigation upon request. This new language actually reflects what has been the current practice. Again, the OIGs are not law enforcement. By this time the case is under investigation by the OIG, law enforcement is already deeply involved. It is not the intention of the OIGs to interfere with any criminal investigation. Finally, regarding the issue of subpoenas, LB298 lays out distinct

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parameters for all legislative divisions. The bill makes it clear that all legislative divisions might need the power of a subpoena to compel information must request such an issuance, and that all subpoenas are requested on behalf of division or committee, but are ultimately approved by the Executive Board. I have filed an amendment to the bill that attempts to address some concerns as well and make some minor changes. The most notable changes in the amendment include, first of all, making the appointment of the oversight division director mirror the same process we currently employ for the public counsel. The Director of Legislative Oversight would be appointed by a two-thirds vote of the Legislature. The director would serve a six-year term, could only be removed for a cause by a two-thirds vote of the Legislature, and this is done to ensure independence from political influence. Second, ensuring individuals being interviewed as part of an oversight investigation are able to have counsel present. This latter change is an attempt to address concerns raised by the administration as well as the courts. I think this is probably a good time to point out that part of the reason LB298 is so lengthy is because the bill also moves all these different offices under the same Chapter. Currently, the public counsel statutes are in Chapter 81, the OIG Child Welfare Act is in Chapter 43, the OIG Corrections Act is in Chapter 47. Under LB298, all relevant provisions are moved under Chapter 50, which is specific to divisions of the Legislature. I want to pause-- I want to end by thanking Trevor Fitzgerald, our senior research consultant. Trevor has put a lot of work into this bill, and I've asked him to testify in a neutral capacity to answer any technical questions that you might have on this bill. So to recap, LB298 addresses the issues raised in the AG Opinion by providing direct legislative oversight over legislative offices of oversight, provides for the necessary access of information while maintaining confidentiality, and confirms that the Legislature is a co-equal branch of government for which constitutional duty of oversight is vested. LB298 lays down a foundation for a structure that will guarantee robust, effective and sustainable legislative oversight. I urge this committee to give this bill very serious consideration. And should LB298 pass, this committee will need to be ready to address the issues of the Oversight Committee, appointment of a division director and the office location for the new division staff. So there will be a lot to consider. But I think adopting the proposal outlined in LB298 will only strengthen the ability of the legislative branch to fulfill its duties. And with that, I will close my opening remarks. Thank you for bearing with me. There was a lot there.

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HANSEN: Thank you, Speaker Arch, for that short opening. A lengthy bill. All right, let's see if there's any question from the committee. Senator McKinney.

McKINNEY: Thank you. And thank you, Speaker Arch. I'm just kind of curious how, how do you think this bill impacts the Legislature's constitutional power to oversee penal institutions? Do you think it creates any conflicts of current or existing oversight mechanisms?

ARCH: I, I, I don't believe that it-- it doesn't directly. I know that, I know what you're addressing here, the question. I don't-- it doesn't address that issue. The Legislature maintains it's, it's right in, in Corrections. And however, I do think that well in, and in discussions later on I think, I think Ombudsman Julie Rogers is going to come. It'd be a good question to ask her regarding current situation with Corrections. My understanding is that the OIG for Corrections is functioning well with the, with Corrections. So I don't, I don't think that it's going to-- I don't think that it's going to impact that.

McKINNEY: OK. In this bill also, are employees of like these oversight agencies going to be afforded due process for disciplinary actions or sanctions?

ARCH: It's not-- it would not affect the employees' rights in, in that.

McKINNEY: OK. And just-- maybe I'll just ask Julie this, but I'm just wondering, how does this impact the independence of the OIG overall, moving it under a division of the Legislature?

ARCH: That would be a great question for--

McKINNEY: All right.

ARCH: --yeah, for the Ombudsman.

McKINNEY: Thank you.

ARCH: Yeah.

HANSEN: Senator Fredrickson.

FREDRICKSON: Thank you, Chair Hansen. Thank you, Speaker Arch, for your robust opening. There was a lot of information there. Do you

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envision this to be a standing committee with regular meetings, or how do you envision the actual committee--

ARCH: This--

FREDRICKSON: operationalizing?

ARCH: This would be like the Performance Audit Committee as it is today.

FREDRICKSON: OK.

ARCH: So that, that part would remain. It would not be a standing committee as in regular meeting. It would be called by the chair and, and by the director of that division working together and-- but, but it would be different in that-- the way Performance Audit works right now is with, with, with Stephanie Meese, we will identify three audits that they will do this next year. The staff go out and do those audits, the reports come back periodic. This I would envision meeting more regularly than that because, because I mentioned in here that, that I would envision-- there's two functions that, that need to happen. One is monitoring and one is auditing. The monitoring piece that, that I think can really be beefed up right now has to do with these key performance indicators. So working with the agency or working with the courts and Probation and working with the, the committee of jurisdiction, a list of what you would say are these, are these things that you need to watch. And one of those I'll use as an example of room seclusions. That's one of the things we've identified, room seclusions. We see room seclusions going up. OK, there's the monitoring. But why, right? And then I see that-- I see, well, the indications are here that have been identified by the, by this new committee. Then you can go back and say to the, to the committee of jurisdiction, here, here's information here. We're seeing a trend in this particular key performance indicator. And that committee chair and that committee then can pull the agency in and say, hey, help us understand why are we seeing these go up? And so that's-- so it's a little bit of a different function and it's not just, you know, turn them loose three, three audits. There's going to be some ongoing monitoring and reporting that will then go to those committees of jurisdiction.

FREDRICKSON: OK. My other question, if I may. Would individual members of the Legislature have access to this division similar to how we do currently with--

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ARCH: Right.

FREDRICKSON: Research or Bill Drafters, for example, or would you have to all member of the Oversight Committee to have access to the oversight division?

ARCH: I don't know what you mean by access, but, but when the, when there-- there will be some confidentiality issues regarding some of the material. But when the reports come out, they're, you know, they're, they're available to the-- as, as the committee releases those reports, they are available to the senators.

FREDRICKSON: Thank you.

HANSEN: All right, seeing no other questions. See you at close. You're closing, right?

ARCH: I'll stay to close.

HANSEN: OK.

ARCH: It won't be as long.

HANSEN: OK. Darn it. All right. So with that, we'll take our first testifier in support of LB298. All right, with that, we'll take our first testifier in opposition to LB298.

COREY STEEL: Welcome. Welcome. Thank you. Good afternoon, Chairperson Hansen, members of the Executive Board. My name is Corey Steel, C-o-r-e-y S-t-e-e-l, I am the Nebraska State Court Administrator for the Office of the Courts and Probation. I'm here today to provide testimony to LB298. While the judicial branch is testifying in opposition, this is a, this is a fluid status and we, we may reconsider our position pursuant to ongoing conversations with both the legislative branch and the executive branch. We recognize the attempt by the Speaker, by Speaker Arch and others to close closely tie the authority of the OIG to the policymaking function of the Legislature by placing the office of the Office of Inspector General under the direct supervision of the director of the Division of the Legislative Oversight Committee. However, the judicial branch has remaining concerns that the legislation may violate the Separation of powers clause of the Constitution, as indicated in State ex rel. Veskrna v. Steel. 296, Neb. 581, 2017, one branch of government may not unduly interfere with the ability of another branch to perform its essential functions. I'm going to skip to some other parts as it's quite lengthy, but I wanted to provide you all of our testimony. There

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re-- There remains concern that the oversight and investigation functions may contradict Nebraska State Constitution Article II, Section 1, more commonly known as the Distribution of Powers clause. While the legislation cites to Article IV, Section 23, its support of obtaining information, the title of this section is Executive officials and heads of institutions; reports to Legislature; information from expending agencies. This section does not apply to the oversight and investigation attempt here by the legislation. Reliance on this constitutional section is likely misplaced. Adjudicatory and rehabilitative functions of the juvenile courts are an express power given to the judicial branch. Legislation that allows the OIG to investigate and question judges' court orders pertaining to juvenile cases may implicate, implicate separation of power concerns. Nebraska Constitution Section 5-- Article V, Section 1 gives the judiciary the general administrative authority over all courts in the state, allowing unfettered and unlimited access to records that inform judicial decisions, raise additional concerns, constitutional concerns and could invade judge's protected deliberative process, potentially ending their independence in making decisions. Also, Nebraska Revised Statute 29-2249 specifically designates the Office of Probation Administration as part of the judicial branch of government under the direct supervisory authority of the Nebraska Supreme Court. Probation authority for actions is based on two sources: one, statutory authority, and two, court orders. Probation acting regarding juveniles under its supervision are subject to continuing judicial review. The information supporting a judge's deliberative process should not be independently reviewable and subject to actions by another branch. Therefore, the concerns that the access of information by the inspector general is no longer related to the specific investigation. It is concerning that the language "for purpose of investigation" or "in course of investigation" has been removed from the act. This seems to be expansion of access. I will--

HANSEN: You can finish up. It's all right.

COREY STEEL: Another concern is the OIG's overreach of judicial branch employees. I bring your attention to Supreme Court case Board of Education [SIC] v. Exon, 199 Neb. 146, 1977. Because the Nebraska Constitution vested a general administrative authority over the courts and probation office of the state to the Supreme Court, any legislation that usurps or interferes with the authority may be an unconstitutional delegation of powers to another branch. The provision centralizing any litigation resulting from this act in Lancaster County District Court ignore the fact that these records and files and

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the people involved reside across Nebraska. The dissemination of records of juveniles or families and foster parents and court actions, for example, in Keith County, would be determined by a judge in Lincoln, Nebraska. As previously stated, since the Office of Probation Administration operates within the judicial branch of government under the direct supervision of the Nebraska Supreme Court, oversight by the OIG and another branch is strongly opposed. Again, we'll continue to collaborate and work with Speaker Arch on our concerns, and I thank you for your time and happy to answer any questions.

HANSEN: Thank you. Are there any questions from the committee? Senator Bostar.

BOSTAR: Thank you, Chair Hansen. Thank you, sir, for being here. You know, it just struck me a little bit as, as you were testifying and thinking back to Speaker Arch's opening as well related to core functions of governmental branches. Broadly speaking, right, legislative branch legislates and appropriates, as the Speaker put it. Passes policies and laws. The executive branch executes on those and the judicial branch interprets them fundamentally. Isn't this, I mean, with your concerns over overreach, particularly into the judicial branch, isn't this sort of why the judicial branch maybe shouldn't have administrative functions? Isn't there like the bal-- the checks and balances system of the, the Legislature being able to pass a law if they feel like the executive branch is doing something that isn't in line with the interests of the state or policy, is, is that check? The executive can act within and up to the lines of the laws and the constitution. Maybe they cross them and the judicial branch can determine whether or not they, they have or they haven't. It seems problematic, though, then for the judicial branch to have its own administrative functions. Because I don't see the check on that, right? I mean, we can-- the legislative branch and the executive branch can sue each other, go to court, get injunctions. We can do those things and, and kind of take that matter to the judicial branch to, to sort through. As, as its, its function. But there isn't a good way to do that with the judicial branch, right? So if the Legislature passes a law that relates to something that's being administered by judicial branch and we, the, the Legislature doesn't feel like it's necessarily happening or is in line with the intent of the legislation, we can't very well take the court to court. I mean, I suppose we could try. But the idea that the judicial branch itself would rule in a way to say that they were acting outside of their own purview is in itself unlikely and problematic. And so isn't this all a little bit to say that there are real specific challenges with having

administrative functions housed within the judicial branch of government?

COREY STEEL: Senator, I'm going to answer that in two ways, if I could.

BOSTAR: Please.

COREY STEEL: First, specific to the OIG, and then maybe a little more global, if I, if I could. First is the difference with the juveniles that are placed on probation, they are under court order. And the court order dictates what services and supervision should take place by an arm of the court, which is the juvenile probation officer. OK? So the court in and of itself is the one that is oversight over that individual case and the cases that are in front of that court. So that is the oversight, because the judge puts those parameters in place. And then juvenile probation is the one that puts those services, the court orders or those supervision orders in place with direct oversight of the judge. So that's specific to this case. The checks and balances is, is the judge on those case-- on that case, with then the administrative operational function of the court system by the Chief Justice, the head of the third branch of government. Globally, this Legislature has placed multiple administrative functions under the judicial branch. If we look globally, this body has placed the Office of Public Guardian under the judicial branch. That's a policy decision that came from this, this body as to you will perform these duties outlined in the Public Guardian Act. They have placed post-release supervision, which is a parole function, under the administrative authority of the judicial branch. They have also done that with adult and juvenile probation. So those are the functions. But the core function of the court is exactly what you expressed is, is the judge, is the court, is the court operations of the, the third branch of government. This body has made those other policy decisions for us to then take over these administrative functions of the state.

BOSTAR: No and, and absolutely right. I, I don't, I don't think for a second that the judicial branch of government manifested these, these tasks on their own. They were placed there by legislative branch. I suppose two things. One, I suppose the argument I, maybe I'm trying to make is perhaps it was a mistake for the legislative branch to assign administrative functions to the judicial branch. And then related to the, you know, in criminal matters and probation and the court's purview and the judge's purview over an individual, I mean, those-- all of that still exists within the four corners of the statutes that the legislative branch has written. I mean, we don't, we don't have to

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have probation. We don't have to have some of these things. They exist because the legislative branch created them, as, as is the duty of the Legislature. And so I think it's just where these, where these lines bleed from one side to the other creates frictions that I wonder if the easiest way to sort out isn't to create more separation, especially as you bring concerns forward related to oversight. Because it is essential for the legislative branch, in order to serve our constituents and the public of the state of Nebraska, to have information related to the statutes we pass, the programs we create, the administrative functions that we bring to light. We need that information. Otherwise we can't really execute on our constitutional function, as I believe was envisioned. And so would it, would it be better to just create more separation and truly try to leave administrative functions to the executive branch, legislative functions to the legislative branch, and judicial functions in their, in their core sense to the judicial branch?

COREY STEEL: What I will say about giving the Legislature information, if you look statutorily at the number of reports, whether it's data reports, whether it's cooperating with audits, whether it's all of the information that we provide, testimony, whether it's coming in, a senator asks for information regarding this topic, we supply all that at all-- all the time. We have, we have so many legislative reports that we have to, based on statute that we prepare and we provide to the Legislature. We also in this discussion, one of the discussions we had with Speaker Arch is there-- we prepared kind of a draft report that says, everything that you have in the offi-- Office of Inspector General Act, we can provide you all of that information in a report on a monthly, quarterly, yearly, whatever, whatever the Legislature would like. It's the simple fact that a person who is employed by the Legislature having direct access, case file access to a case that is in the court system, that is the oversight of the judge, that's where our--

BOSTAR: The problems.

COREY STEEL: --problem lies. If providing you information, coming and testifying in front of a body about system issues, we have no concern or issue with that because it will create a better system and enhance the system, its access. And one individual coming in from another branch of government--

BOSTAR: Yeah.

COREY STEEL: --in that aspect.

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BOSTAR: I, to be honest, I hear you. But I think just going back to the original point, I think it, it sort of it makes the case for more separation. But anyway, I-- we don't, we don't have a lot of time. With that, I'm sure this conversation shall continue. Thank you, Mr. Steel. And thank you, Chairman Hansen.

COREY STEEL: Thank you.

HANSEN: Senator Fredrickson.

FREDRICKSON: Thank you, Chair Hansen. Thank you, Mr. Steel, for being here. So I listened to your, your testimony, and I thought it was an interesting exchange with Senator Bostar. And it actually got me thinking a little bit as well. What, what level of oversight would feel appropriate in the court's eyes for the Legislature now?

COREY STEEL: We have no concern or issue again reporting on those fundamental elements outlined in the OIG Act. We've mocked up a report that we could submit to the Legislature. And then if those systematic issues, and, and that's the big thing, is how do we change if, if there are system issues? I think the example that Speaker Arch used as, as an example, I'll, I'll kind of go with is, if there is room confinement, although we don't have room confinement. But if there-- let me use a different one that, that could pertain to Probation. If all of a sudden in a report we have seen over a trend line over the last two years, an increase in suicide attempts by juveniles under probation. It's, it's something that would spark somebody to say, why are there additional sui-- increase this year in suicide attempts? I think that that's something that we come to a body and say, we have noticed this as well. Here's the information we have found. We have made these adjustments. If there's further questions that we need to respond to is why were there additional suicide attempts the previous year or in this year compared to the previous years, those are systematic issues that we all want to solve. But it's on a particular case. One case, somebody coming in and doing a review that we've already internally done. We do a review on any, any individual case that there is-- we have a, we have a list of if there's, if there's an issue, that we do an internal review and see is there a policy issue that needs to be addressed or changed. Was there something problematic with the officer that may have been doing the supervision that they missed something or they did something wrong? And we handle that with our policies and procedures through that rationale. So when, when we talk about Legislature looking at systematic issues, looking at one case, doesn't give you a systematic issue, looking at the data on a level and then starting to drill down on those to us is addressing

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systematic issues, which in turn could create policy change by the Legislature.

FREDRICKSON: So the, the, the concern is the-- to your point, it's your worry that the oversight would be looking at individualized cases as opposed to larger trends. Is that, am I understanding that correctly?

COREY STEEL: Correct.

FREDRICKSON: Thank you.

HANSEN: Senator McKinney.

McKINNEY: Thank you. Thank you. When did juvenile probation go under the courts?

COREY STEEL: We've always had juvenile probation under the courts. But in 2013, I believe, is when the Legislature also then transitioned. There was a population that was with the executive branch Office of Juvenile Services, and that population then transferred over to Probation. So there was only one probation-- only one system working with juveniles that were within the juvenile court. But we've always had juvenile probation. I say always, but longstanding, way before 2013, we've had juveniles on probation. The reason at, at that time Senator Ashford made that legislative change, was juvenile-- we had the majority of kids were on juvenile probation, but any time they needed a service or needed placed out of the home and the parents couldn't afford those services, they were made state wards. And then they were with the executive branch under DHHS to pay for those services, whether it be Medicaid dollars or resources they had. So at the time of the transfer in 2013, we roughly had about 2,500 juveniles on probation, and DHH had-- DHHS Office of Juvenile Services, I think, had around 500 juveniles that were in their care for out-of-home care or high-end treatment care. Those transitioned with then dollars to pay for those services, so they didn't need to be made state wards in order to access service-- treatment services.

McKINNEY: OK. Thank you.

HANSEN: So it sounds like your concerns are threefold. Two of them seem like they have to do with language. [INAUDIBLE] maybe I'm wrong here, but according to what you were talking about, one of them has to do with the constitution [INAUDIBLE] general administrative authority over the courts and probation office of the Supreme Court implementing penalties for disobedience. That's listed as one of your concerns,

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correct? Now, could that be something that could be corrected in the bill?

COREY STEEL: I think we could work on some language to correct that. Yeah.

HANSEN: OK. The second one, access information by the inspector general is no longer relative-- related to a specific investigation. So basically concern about overstepping their bounds or territory of investigation because there was some language that was left out. That's something that could possibly be corrected in the bill as well. It's like--

COREY STEEL: The investigation piece?

HANSEN: Yes.

COREY STEEL: Yes.

HANSEN: The last one is philosophical, it sounds like. And you-- it sounds like no lack of overs-- there is no lack of oversight over Probation that warrants another branch to intervene. So basically, you're coming to us saying, trust us, we'll do the report. And if you're going to provide a report and testify or have a hearing, what's the concern about having the Legislature work with you to verify what you're saying?

COREY STEEL: It goes, I would say, broader than philosophical. It goes to what I think Senator Bostar had talked about, is it starts to erode the separation of powers between each separate but co-equal branch of government. It would be like us in the judicial branch putting a judge in the Legislature and saying every bill you pass, a judge needs to make sure that it's OK.

HANSEN: OK.

COREY STEEL: And there would be fundamental, I'm sure, differences with the Legislature that the judicial branch placed somebody in the legislative branch on the, on the work that you're doing, making sure that you're doing exactly what you're supposed to do.

HANSEN: And I think that's the rub. I'm trying to figure out what I tell my constituents when I'm using their taxpayer money to fund something that we don't have any oversight over. I don't know what to tell them.

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COREY STEEL: There is oversight over every individual case.

HANSEN: Legislative oversight, like the representative that they elected. I don't know how that-- I'm trying to figure out-- I think that's what's trying to be accomplished here. And it sounds like there's some-- it sounds like there's some room to work with here at least anyway.

COREY STEEL: I think there's a lot of room to work with.

HANSEN: And so-- I'm just making sure I'm not mistaken. So it sounds like the judicial branch is willing to work with the Legislature to find a way to provide information.

COREY STEEL: Yes.

HANSEN: Good. OK. I just want to make sure at least we're getting to-- we're pointing in the right direction at least.

COREY STEEL: Yes.

HANSEN: Excellent. OK. Any other questions from the committee? Seeing none. Thank you.

COREY STEEL: Thank you.

HANSEN: Appreciate it, actually. All right. Anybody else wishing to testify in opposition to LB298? All right. Seeing none, anybody wish to testify in a neutral capacity? Welcome to your Executive Board.

MIKE HILGERS: Good afternoon, Chairman Hansen, members of the Executive Board. My name is Mike Hilgers, M-i-k-e H-i-l-g-e-r-s, I currently serve as Nebraska's Attorney General. I'm here to testify in a neutral capacity. I want to first thank the Speaker in particular and his team, Mr. Fitzgerald, on the work that they put in over the last year and a half on this particular issue. I think Nebraskans will benefit from this being resolved, if it can be resolved, in a legislative room versus a courtroom. So I'm grateful for his efforts. This-- the Constitution lays out three separate co-equal branches. The fact that we have separation of powers is a significant part of our protection of our liberty as citizens. And it is better if-- those branches are all in dynamic tension with one another. And I think it's better if we resolve these through cooperation and collaboration than in a courtroom. Because it's still possible that it goes into a courtroom, if it does, I will-- my office will represent at least one, if not more, but not all of the branches. And so I think it's more

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important for my office to be neutral. Having said that, I want to provide a few comments as to the substance of the bill. I think directionally, the Speaker and LB298 is headed in the right direction. I think it responds to a number of the concerns that we outlined in our Opinion. There are some language changes, I think, Mr. Chairman, to your point, I think we have some concerns about some of the language. And but I think that there's a path on a lot of these issues to sort of reach common ground. And if I may, I would just maybe give a few for-instances and give you some examples in the context of our Opinion. There are some good things, by the way, that, that are in this particular draft, one of which is the change on the shalls and the mays with law enforcement. Another is that this recognizes that the IG or the public counsel have to get a subpoena that is blessed and approved by the Legislature. However, there are some, there are some changes that I think I want to note. Number one, despite the fact that there are subpoenas, some additional requirements for subpoenas and who issues those subpoenas, in Section 31 and 50-- Section 31-52 of AM238. The actual-- the bill actually adds additional empowering language that allows the IGs that to have acc-- shall have access to all information and personnel necessary to perform the duties of the office. This sort of undercuts, I think, the good things that the subpoena authority does. Another example, the Speaker did mention that one of our concerns was direct computer access, which I think this body would recognize would be a concern if the judiciary had direct access to your emails, Senator Jacobson. There are some changes that I think are beneficial, where there's a striking of "direct computer" and "computerized records" in Section 36 of LB298. However, it adds a new definition of records, and the new definition of records in Sections 27-57 of AM238 are very broad and essentially undoing, in my view, the good work that the changes of the Section 36 are. In other words, the new definition of records essentially allows for the access to electronic records. It also eliminates a-- there's a currently in the current law, there's a limitation on unannounced visits of the IG. Those visits have to be limited for the purpose of requesting records relevant to an investigation. That language, that limiting language is actually is-- has been taken out in AM238, Sections 34 and 35. I'm almost done, Mr. Chairman. I can just give you a couple more for-instances. The LB298 did have a change that was reflective and reacted to our concern that the Legislature, the senators, weren't directing the work of the IG. And LB298 required this new committee to oversee and direct, which I think was very positive. The AM actually though strikes "and direct," and just says the committee "oversees" it, which we think is a loosening of the standard that we think-- I wanted to flag for the committee. In addition, one of our concerns in

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our Opinion is that the IG is not subject to removal from the Legislature. The IG, not this new committee chair. And one of the things that we pointed to was that there's multiple individuals that have to sign off on removal of the IG. And in the original bill, the green copy, Sections 28 and 49, it adds more. It adds another person. It doesn't actually address that concern, it actually makes it-- there's another person, the chair, the chairperson of the Legislative Oversight Committee, in addition to three other individuals, have to sign off on a removal. I can stop there. The-- we did, if I might just conclude, Mr. Chairman, we're-- we are-- we went through the amendment at the end of last week, we received that. The bill is very lengthy. We're happy to go through any of these particular changes. And if it's, and if it's valuable, we think we can be a constructive party in trying to resolve this through legislation. So we're happy to make our office available and the attorneys in our office to work with the judiciary as well as the executive branch and the Legislature as needed to see if we can resolve this. So I'm happy to answer any questions.

MIKE HILGERS: Any questions? Senator McKinney.

McKINNEY: Thank you. Thank you, AG Hilgers. Do you think this bill diminishes government oversight?

MIKE HILGERS: Do I think it diminishes government oversight? I think it, it's a good question. I don't know if I would frame it that way. Certainly, I think it takes away some of the tools of the Legislature, but I think it helps strengthen separation of powers, which I think is-- which is core to our Constitution and defending our liberty.

McKINNEY: But I guess my concern is in our Constitution, the Legislature has authority, especially with the penal institutions. And I don't think we should be diminishing that oversight. So is there anything in here to strengthen that or is there anything in here that diminishes that authority?

MIKE HILGERS: That's a good question, Senator McKinney. I would say two things. One, the provision you're referring to, which does allow the Constitution, the Legislature, to control the penal-- I don't think there's any contention. We addressed this in our Opinion. I don't think there's any contention of the inspector general, and I, I hold Mr. Kobernick in very high regard, is actually running both the Corrections institutions in the state of Nebraska. I don't think there's any suggestion, in other words, that the IG is taking advantage of the power to run Corrections. They are just providing

some additional oversight, not running it. So I don't think that that, that provision is implicated here. The other thing I would say is, yes, there is oversight in the statute, but if it's unconstitutional oversight and it's held unconstitutional or a breach of separation of powers, then I don't think, I don't think it's, it's oversight that is-- does Nebraskans any particular sort of good. I think the goal of legislation would be get something that's robust, that's durable, and constitutional, that's not challenged in the courts and that could stand the test of time.

McKINNEY: Yeah, but if it's not just control though, because it's also management as well. So if we, if I'm reading that right, and it's going through my head correctly, if we have the authority to control and manage penal institutions, shouldn't we be able to tell the IG how to operate them?

MIKE HILGERS: So--

McKINNEY: I don't get how that violates the separation of powers of the Constitution.

MIKE HILGERS: Well, I would refer you to our Opinion for an in-depth discussion of how that doesn't apply here. I don't think, and Senator McKinney, I haven't seen any of-- all of your bills this year. I don't think there's a bill in the Legislature that I've seen that purports to actually exercise legis-- legislative authority to run Corrections. So I think that's one, that's a separate specific exception to separation of powers. I don't think that that's, that's anyone suggesting that that in any way is being used here. So I think that's like the key point. The second point, though, is that the IG, in both cases with the executive and the judiciary, is getting enormous powers under the current law to be able to have unfettered access to com-- computer systems and records. And to the Speaker's credit, he's recognized that. And I think he's trying to sort of come within the constitutional boundaries there.

McKINNEY: I guess my last concern with the bill is that the IG's office coming un-- coming under Oversight Committee or oversight division would be subjected to potential political pressure and be less independent because of the nature of how they will be assembled if this passes.

MIKE HILGERS: Yeah, I understand your point. I think what we pointed out in our Opinion is actually the independence of the IG creates a constitutional problem because I think if you're going to have a clash

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of branches, it should be at the direction of senators. You're the ones who are ultimately responsible for the legislative branch, you and the other 48 senators in the Legislature. Having an independent inspector general, as great as the IGs are behind me, as, as Ombuds Rogers are, I think that independence, it creates a constitutional issue.

McKINNEY: I guess my concern would be, though, if the IG has a report that they want to publish that says the Department of Corrections is doing a horrible job, and you got this committee that's saying, no, you can't put that out. That's, that's what I'm concerned of.

MIKE HILGERS: I understand. You and I spoke in the Judiciary Committee, Senator, about your courage to, to speak truth to power. So I, I'm, I'm certain that in that case, you would find a way to be able to say the truth as you saw it. At the end of the day, though, in a world of tradeoffs, I'd rather have a political body making political decisions than, than undermining our separation of powers of the Constitution.

McKINNEY: All right. Thank you.

HANSEN: Senator Jacobson.

JACOBSON: Thank you, Mr. Chairman. First of all, I want to set the record straight that I chair the Banking Committee. So if the judiciary branch wants to look at my emails, that they're going to be really bored. [INAUDIBLE]. The-- I guess with regard to as you look at LB, LB298 and how, how your opinion was released, am I to assume that, that based upon your testimony today, that LB298 largely fits within your opinion with a few tweaks? We're pretty close?

MIKE HILGERS: I would-- and if I left that impression, Senator, I apologize. I would say the Speaker directionally is going in the direction that I would say the Legislature would need to go. By the way, we don't have a vote. But I will say this, and I told this to the Speaker when we issued our Opinion, we do get to decide who we represent in a case. And what I told the Speaker, when we issued our Opinion that I could not in good conscience under my legal duties represent the Legislature in a lawsuit. So one of the things I'm viewing is, are there enough changes that if there was a separation of powers fight, we could represent the Legislature? I would say he has touched on some-- the Speaker in LB298 has touched on some things that are important. But I think the language as is, Senator, we would need, we would definitely need tweaks. That I wouldn't want to necessarily

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characterize it as, you know, we're on the five yard line. I think what I see from the Speaker is enough indication to try to resolve these issues through legislative change-- or through changing the language. You know, once we get down to it and I point out these issues, he might balk at that. And so I think there's a path. Whether we're on the five yard-- I want to say we're on the five yard line, maybe, you know, and getting into field goal range.

JACOBSON: So are you able and willing to engage with the Speaker, I guess, as we try to move this to the goal line?

MIKE HILGERS: 100%. Absolutely.

JACOBSON: We'll continue to get input so that-- obviously we don't want to pass a bill that's going to be unconstitutional, and we don't want to pass a bill that has an AG Opinion that raises a cloud over whether or not it's constitutional. So I think that's what we're all interested in doing is, at the end of the day, getting all the oversight we can get without stepping across that, that imaginary line that, that actually is real.

MIKE HILGERS: Absolutely. We work with the Legislature and also our other clients, the judiciary and the Governor's Office, to see if there's a resolution. Absolutely.

JACOBSON: And I would encourage it. Of the three branches, that this is probably the preferred branch. But I just wanted to point that out, in case you were making selections.

MIKE HILGERS: Although, to Senator Bostar's point, these, the issues get resolved probably in the court, Senator. So--

JACOBSON: That is true.

MIKE HILGERS: --they have an important say in this as well.

JACOBSON: That is true. That is true.

HANSEN: Senator Fredrickson.

MIKE HILGERS: Thank you, Chair Hansen. Thank you, AG Hilgers, for being here for your testimony. Couple of questions for you. So I was listening to your testimony and I-- so am I to understand correctly, is one of your primary concerns this idea of just kind of like unfettered access? Is that--

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MIKE HILGERS: That is-- absolutely. Yes, sir.

FREDRICKSON: Am I understanding that to be correct? OK.

MIKE HILGERS: Yes, sir.

FREDRICKSON: What-- so and I, I was reading a little bit more about the history of this amendment. So my understanding is that that was partially done by the executive branch, is that the Legislature historically would request documents, case by case. And just out of the convenience factor was sort of just given kind of acc-- computer access around these things. So if that were to shift a little bit, that would make this more palatable, back to sort of like a individualized request or--

MIKE HILGERS: Yeah, that's-- there's two points to what you're saying. One is to the extent the branches want to agree on anything outside of putting something in statute, that's really kind of their prerogative. And I understand, at least for the last year or so, the executive branch has been working under an MOU. And to the extent that Governor Pillen and the executive branch wishes to provide some information of their own free will, for whatever reason or no reason at all, that's really their prerogative. So to the extent that they've agreed, I would, I would sort of take that out of a statutory mandate. And I think that's really the issue that we have is the second issue, which is the statutory mandate, which essentially says that a portion of the legislative branch has this unfett-- unfettered on-demand access to electronic information, emails and the like, as well as physical space.

FREDRICKSON: OK. And my other question for you would be kind of similar to what I asked Mr. Steel earlier is, you know, you kind of have this unique position. You've served in the Legislature and now you're on the-- you're the AG, so you sort of see both sides in many ways. What level of oversight feels appropriate to you for the Legislature?

MIKE HILGERS: Yeah, that's a really good question. I think it's a couple of different things. I certainly think that the Legislature is entitled to get some information to be able to pass legislation for its policymaking function. So I think having the purpose, though, of the information gathering for legislation and not for law enforcement, which under the current statute almost sort of has a law enforcement feel. I think it's important, it's got to be tailored to-- it's got to be tailored to a specific legislative function, which is pretty

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powerful, lots of functions, but not unlimited. And then I think there has to be a due process-type of mechanism for the other branches, the ability to-- which is why, in fact, I think when we issued the subpoena-- or the opinion, we talked a lot about subpoenas because that is a known sort of judicial process where you can, instead of having unfettered access, you have to send a request. The other side has the opportunity to object. You can go to a courts, a third-party arbiter. So I think it's-- I think those are the two things. Now that's like a very high level, so oversight is 80,000 feet. If I take it down to 50,000 feet and I say, it's got to have a legislative purpose and it's got to be maybe in a something that has due process, that kind of gets us closer. But I really think like this-- you have to go even deeper and say, OK, when can you have access? What kind of information can you have access to? What are the requirements on the other branches in terms of responding? Is this a subpoena that requires you to respond within a day? Do-- what kind of rights do you have to object? You know, in a civil discovery process, you, you could say it's burdensome, it's too expensive. I can object to privilege. Are those protections in there? So I think there's a lot of really granular things--

FREDRICKSON: Sure.

MIKE HILGERS: --to be able to say what's appropriate. The good news is, though, Senator, is I think both in the current statute as well as our Opinion and in LB298, the Speaker is touching on a lot of those issues that we-- so we don't have to like reinvent the wheel in the sense of like coming up with the, the various topic areas. It's just a matter of agreeing on the, on the language and, and getting a place where the other branches are comfortable.

FREDRICKSON: Got it. Now, I know you said you don't think you're at the 5 yard line, did you say the 10 yard line

MIKE HILGERS: No, field goal range.

FREDRICKSON: Field goal range.

MIKE HILGERS: Depends on how good your kicker is, Senator, but you know.

FREDRICKSON: I needed to clarify that for the record. Thank you.

HANSEN: Senator Ballard.

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BALLARD: Thank you, Chair. Thank you for being here, Mr. Attorney General. Excuse me. If I remember right, your Opinion stated that the Legislature had no role in the decisionmaking of the IGs. That, that sound correct?

MIKE HILGERS: Yeah, that was one of our concerns.

BALLARD: OK. Do you think the proposal, the way the, the system, the Oversight Committee is set up, do you think that provides proper role in the decisionmaking of the IGs-- the IGs?

MIKE HILGERS: It's a good question, Senator. This is kind of my answer to Senator Jacobson. I think directionally it's head-- it's heading in the right direction. So what do I mean by that? I think putting the IG under a legislative body, I understand Senator McKinney's concern, but at least you have legislative-- legislators who have some level of oversight over the IG so that they're not-- under the current bill-- under the current statute, they can go out and kind of do whatever it is that they want. So you have some level of oversight. At the same time, I do have some concerns about the removal provision that I mentioned before. And I also have concerns, as I mentioned, regarding the fact that AM238 pulls out the direction-- the direct language. So LB298, the green copy says "oversee and direct". I think that's meaningful. AM238 takes out "direct." I think that's actually a meaningful change. So I think-- those are the first two things I would say. We are scrubbing. It's, it's a big bill. As the Speaker mentioned, multiple different chapters of statutes. It's a big bill, lots of amendments. So we're kind of like making sure that we're cross-referencing everything carefully. So I don't want to say that's a comprehensive list. I don't think it's there yet, but I think there's some changes that could be made that would get it in a better place. But certainly structuring it under a legislative committee like Performance Audit-- in fact, the Speaker and I had conversations after the Opinion, and we talked about Performance Audit. That is, that is an agency-- or a committee of the Legislature. It's a special committee, but that does have the ability to get information from the executive branch. It's sort of a time, place and manner of sensitive information that's protected. People can review it. It's kind of a well-worn process that I think could be a good model to be followed.

BALLARD: Thank you.

MIKE HILGERS: Does that answer your question, Senator?

BALLARD: It does. It does. Thank you.

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HANSEN: Senator Jacobson.

JACOBSON: I got one last question. Since you brought up Performance Audit. I know it seems like Performance Audit has been able to kind of operate the way they have been operating. And they were kind of pretty well not really focused on in the AG's report. And I've served on Performance Audit, and, and it seems to me that primarily what we're doing is auditing to make certain that the dollars that were appropriated by the Legislature for certain programs, that those dollars are in fact being spent in the manner in which they were intended. I think it gets back to Senator Bostar's question for the judiciary about these are administrative functions. And so we're really overseeing administrative functions, where I understand Mr. Steel and the concern that the Legislature should not be interfering with judges' decisions and what the judges are overseeing. But when we give them administrative powers, then that's where we get into some issues of what's our role in overseeing the administrative part that we've delegated to the courts. Thoughts on that?

MIKE HILGERS: Yeah, I take Senator Bostar's point in part by saying, as I heard him, hey, it's really hard if we're going to be suing the judiciary on a separation of powers case and the judiciary's resolving the lawsuit. It's kind of hard maybe to think that they would be impartial. I for one, Mr. Steel, think that the Chief Justice will be impartial. That they will call balls and strikes. I think if you move the executive or administrative function to a different branch, you've changed one party on the other side of a V, but I think the court's going to call balls and strikes either way. And so I don't think you've resolved the underlying separation of powers question because now you're just-- it's the same, unless you've actually done something to, to create more protections, you're just moving it to another branch and having a different defendant. And maybe, maybe there's some perception that you'll have a fair hearing, more fair hearing in the judiciary. I, I don't subscribe to that, but I don't think it resolves the separation of powers issue.

JACOBSON: What I think what we're trying to get at is that I think that we have-- I think the Legislature generally feels like that they have a responsibility to oversee what some of the administration that's going on in the agencies, and is that consistent with programs that were passed and funding that was allocated? And I think that's part of what we're trying to get at, is where does the line get drawn for overseeing administrative functions in, in other branches of government?

MIKE HILGERS: I completely agree. And I think that's just where the devil's in the details. I think the Legislature has an oversight function. We said that in our opinion. I agree with it. I said as a senator, I say it as Attorney General now. I think where we are currently with the bill is way over here, which is not oversight function. It's pretty much we get to see anything that we want to see at any time, almost for any reason. It's a little unfettered, little hyperbolic. But I think this, this bill gets us further closer to here, but I don't think it's where it needs to be in order to sort of separate this to to be where we want to be with separation of powers.

JACOBSON: And I think that-- I don't think you're going to get a lot of pushback on that. I think, I think we all kind of understand a little more about what the rules of the game probably need to be to pass muster with constitutionality. And, and I think here, again, it gets back to that's should be our goal with LB298 is let's get it right on this time around with the bill.

MIKE HILGERS: By the way, the Performance Audit, I was on Performance Audit. It's a great example because the information they saw, at least when I was there, very sensitive information regarding tax incentives under the Imagine Act. That was not done at the, at the point of, you know, the tip of a spear with a subpoena. It was collaboratively with the executive branch. There were controls, protections that were in agreement, who could see it. So I think it's a good example. I'm not saying it's the perfect model for this, but I think it's a good example of where the branches can collaborate through a formal mechanism of the Legislature, to see this kind of information in a way that actually feeds into and informs their oversight legislative function.

JACOBSON: And probably also I think it's important to note that Performance Audit has no ability to do enforcement. In other words, they're just shining a light on here's what we found. And this didn't happen the way it was supposed to be, and here's the numbers involved. Here's our report. And we're done.

MIKE HILGERS: Yeah, I think that's right, Senator.

HANSEN: I would think Performance Audit does have, would you say penalties? Because I think the whole point of Performance Audit, because Senator Hil-- or AG Hilgers and I were on the, I think, Performance Audit at the same time. Is the whole idea is, is do we fund something or not? Right? Do they, do they fulfill the legislative intent that we, that we had the purpose of? And if not, then do we

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continue to fund it? What happens-- OK, I'm not going to ask that question. Why don't-- since you know everything. I trust, I trust AG Hilgers 100%. What do other states do?

MIKE HILGERS: There's not. I'm sorry.

HANSEN: Don't they have an IG too, similar to what we're trying to find here? Or is this--

MIKE HILGERS: There's not an, there's not an IG in the country that has an IG embedded in the legislative branch other than Nebraska. And that's, if you look at the federal level, you-- President Trump just fired a bunch of IGs because they were-- and there's a lot of pending litigation on that. But they, they are within the executive branch. We're aware of no other state or governmental entity that has a common law system, that has an inspector general in the legislative branch anywhere.

HANSEN: But we are a unicameral. So we're unique.

MIKE HILGERS: Yeah, we, we are. We are absolutely. But because it's unicameral, it doesn't follow that it has any impact on whether the Legislature-- because that's not about having a bicameral or not. It's not about the makeup of the legislative branch. It's about do we have three branches? We do have three branches, like other states have three branches: the legislative, judiciary and executive. Our Constitution looks similar. In fact, our Constitution actually has a stronger separation of powers, like an explicit separation of powers provision that doesn't exist in the federal Constitution. The federal constitution is silent on separation of powers. So in the state, there's actually more protection for the executive and the judiciary in this context than you might see in the federal system. And the federal system does not have a legislative IG. There are legislative oversight committees that do have subpoena power, which is what we said in our Opinion. Which we thought that would be a more appropriate place to sort of funnel it through politically accountable actors who can issue legal process that can be-- that other branches can respond to.

HANSEN: And I think that's, like you said, we're also unique in that way, where we're probably the state with the most boundaries on separation of powers. Like you just mentioned.

MIKE HILGERS: There is a stronger protection for all three branches in the state constitution than in the federal constitution.

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HANSEN: So I think that's where the rub is that right? Because then we're-- we have such a separation of powers and how do we then have any kind of oversight over where we're directing taxpayer money and like-- whereas other states may not have as much, so they don't need like an IG per se. So I--

MIKE HILGERS: Yeah--

HANSEN: --we're unique in one way, but then that causes problems over here. But the other states are unique in this way where they don't have the problems.

MIKE HILGERS: Yeah, I think it's actually we are structurally unique. I mean, I'm not saying another state doesn't have this ex-- extra explicit layer, but I think it's just kind of become a, a, a thing. And I was in the Legislature saying it all the time, we're-- we have an oversight responsibility. It's true. But like, what does that really mean, to Senator Fredrickson's question. Does that mean you have the ability to get some information and like make legislative changes that take away or give authorities to the other branches? Yeah, absolutely. Does it mean that you have like this level of detailed, unfettered access? No, I don't think it-- I don't think that it does.

HANSEN: If I could ask one more real quick. One of Mr. Steel's questions was-- sorry, I don't know why I'm asking you. One of Mr. Steel's concerns was about, like confidentiality, I think of information. Wouldn't there be like a confidentiality agreement between like an IG and then the judicial branch, you know, in concern about how they're going, going to share personal information?

MIKE HILGERS: I would say that nothing like that, I think that I've seen in the statute, the bill, or the amendment, I do think it this good question for Mr. Zoeller about when they talk about their MOU. I think they've agreed. I think a great way to approach this generally is through collaboration between the branches and, and reach agreement. I think that's one challenge of putting all of this into statute. But yeah, they can reach that kind of agreement or that would be great.

HANSEN: OK. All right. Senator Bostar.

BOSTAR: Thank you, Chairman Hansen. Thank you, Mr. Attorney General. I appreciate your remarks related to the integrity of the judicial branch to sort of call it how it is, regardless of who's involved in a

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particular dispute. I don't disagree with that at all. I just think that if the judicial branch is taking a specific action, it-- I think it's fair to assume that they believe that that action is in line with constitutional allowances. So suing seems silly, because if they do the thing, they obviously think the thing is in line with what they can do. So why would anyone have any expectation that they would take a ruling against themselves?

MIKE HILGERS: I, yes.

BOSTAR: So that's sort of--

MIKE HILGERS: Yes.

BOSTAR: So I wasn't trying to imply that there's some there's a level of bias. I'm trying to imply that there's a level of predetermination. And that's, I think, a problem. I would also, if I may, draw your attention to the fact that when we think about where the Legislature may have the best success with oversight of administrative functions outside of-- for the Legislature of other branches of government, we have this legislation right here which has-- the judicial branch has deep concerns about. The executive branch, at least through your own testimony, clearly also has deep concerns about. Yet interestingly, the judicial branch came in in opposition and you, sir, are sitting here neutral. And since we're finished with opposition testimony, my assumption is anyone else to follow you will also be neutral. So I think that there are some indicators through even your own actions and behavior that would lend themselves to, to, to tell us, to signal to us that actually we would have better oversight chances through the executive than the judiciary.

MIKE HILGERS: Through a court case or through an agreement?

BOSTAR: Through all of the above.

MIKE HILGERS: Yeah. Well, I would just say this. I do think the way that I view the admin-- you say administrative, I might say almost executive functions within the judiciary, the probation and the like.

BOSTAR: True.

MIKE HILGERS: I think if it wasn't in-- and I'm not, I'm absolutely not here to take a position on that as a policy matter. That's why you get paid \$12,000 a year. I would say if that was not within the judiciary, it would be a very-- I think you would, you would not be left with very much information within the judicial context that you

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would-- that the Legislature would be seeking. And in fact, in my view, it would be such core judicial function like a court record, a judge's notes, that I don't think it would be very easy to sort of separate that out and say there's no way anyone would ever want to try to go get that. So I do you think having them--

BOSTAR: Agreed.

MIKE HILGERS: --combined does create more smoke on the battlefield for sorting through these issues? But that's for you all and the judiciary to sort of think through.

BOSTAR: But I think that's exactly the right point, which is that if you remove those executive functions from the judicial branch, there-- what would remain would be so obviously out of balance that there would be a great deal of clarity for the Legislature. Whereas right now, nothing is clear. And there are, there are real reasons why we should have information. Policy reasons, right? Like core functions of legislative branch of government reasons why we should have some information. But because it bleeds into these branches in the way that it does, we have these challenges, which is why I think getting back to basics is probably in our interest.

MIKE HILGERS: I would only say, I see-- take your point. I see your point. I, I would only say if you move that into the executive branch, I don't think it resolves your separation of powers issue. It just moves-- instead of a fight where it's the Legislature versus the judiciary, it's a fight between the Legislature and the executive.

BOSTAR: Except you're here neutral and they were here opposed. Thank you.

HANSEN: I'm gonna ask one more question, if I can, quick. And this is might just be just a situational question. So if something bad happens in juvenile probation and somebody sues, who gets blamed?

MIKE HILGERS: Oh boy, it just depends on the circumstances. I would say if the judiciary is being sued because it's one of their agents, I would say, I could tell you who would represent them, which is our office [INAUDIBLE].

HANSEN: So then say they lose the case, then who pays for that? That would be us, right?

MIKE HILGERS: Gosh. All I can tell you, Senator, which it might not be accurate for this question. All I know is that we, when we resolve

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lawsuits and it falls under our claims fund or-- it could either in order of our funds, or it is paid through general funds. And we come to the Legislature for approval over a certain threshold, your own committee.

HANSEN: Yeah. So even just from a purely litigious oversight concern, why wouldn't we have oversight then to make sure? Because if we, if something bad happens, we get sued as a state. The Legislature asks the taxpayers to pay for it. So why-- I think even just from a litigious standpoint, why wouldn't you want to have some oversight?

MIKE HILGERS: Yeah, I don't-- and I don't want to put words in Mr. Steel's mouth. I don't think he was saying that, that there shouldn't be some oversight. But I do think the devil's in the details at his point, which, by the way, I fully subscribe to and our office fully subscribes to, is that the statute is currently drafted, goes so far into the information of a, of a co-equal branch as to render itself unconstitutional. And the changes in LB298, while helpful, do not, in my view, remedy the constitutional problem. So yes, by the way, to your constituents, oversight is important, but I think protecting their freedom and liberty by ensuring that we protect the structure of separation of powers, in my view, is more important. Because that is the protection of our liberties and freedoms. Not having one branch, and I love you all, but you can't have one branch and one set of people having all of the power in a particular form of government. And so if that's what-- you didn't ask.

HANSEN: That makes sense. Thanks. Senator McKinney.

McKINNEY: Thank you. And just one question. Do you think this bill, the current version of LB298, I don't think-- I don't know if I have seen the amendment, but do you think there needs to be enhanced protections and due process for the IGs and, and like their employees and staff or--

MIKE HILGERS: I-- in terms of like being like let go?

McKINNEY: Yes.

MIKE HILGERS: I would probably say they prob-- it probably would be the other way, I think, in order to remedy some of the concerns we had, in our AG Opinion. They have a pretty, as the law currently stands, it's really hard to remove them. So I actually think it should be more at-will, go more towards that direction, where the Legislature can take action. Not for these three, it's really for the-- in the

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future. But no, I actually don't-- I think the opposite. I think there should be fewer protections.

McKINNEY: OK. Thank you.

MIKE HILGERS: I think the difficulty of removing them is a, is a problem. Because the more independent they are, I think the more constitutional problems you have.

McKINNEY: OK. Thank you.

HANSEN: OK. Seeing no other questions.

MIKE HILGERS: Thank you, Mr. Chairman.

HANSEN: Thank you.

MIKE HILGERS: Thank you.

HANSEN: We'll take our next testifier in neutral.

KENNY ZOELLER: Hello. Good afternoon, Chairman Hansen and members of the Exec Committee. My name is Kenny Zoeller, that is K-e-n-n-y Z-o-e-l-l-e-r, and I serve as the Director of the Governor's Policy Research Office. I'm here today to testify in a neutral capacity on LB298. And I'd like to thank Speaker Arch for his leadership on this issue. On January 5, 2023, Governor Pillen swore an oath to the Constitution of the state of Nebraska. This oath has been a Northstar while the Governor and his administration conduct the business of Nebraskans. That is why when Opinion No. 23-008 was issued by Attorney General Hilgers on August 16, 2023, the Governor and his agencies quickly worked to remedy what was seen as constitutional infirmity, such as unfettered access to data and facilities, and ensuring that, that a state employee's constitutional right to legal rep-- legal representation can be met. After the immediate constitutional concerns were identified, the Governor and his agencies worked with the Legislature on finding ways to still provide information in a way that could be agreed upon by both parties. I passed out a copy of the signed, quote, memorandum of understanding that the Governor and the legislative branch entered into on February 14, 2024. To be clear, this MOU should not be seen as a commentary of the constitutionality of the existing law, or LB298. Rather, we hope this MOU can be a template in how each branch can interact without the executive branch providing unfettered access to the legislative branch. Moving forward, the Governor wants to ensure that the Legislature can access information it needs to legislate-- to legislate in a constitutional

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way. That is why the executive branch has been and will continue to be willing partners in helping shape this legislation. In closing, as the Governor's actions have shown, the executive branch is a willing partner to ensure the leg-- to ensure that legislative oversight is done in a constitutional way. And I'd be happy to try to answer any questions you might have at this time.

HANSEN: Thank you. Senator McKinney.

McKINNEY: Thank you. And thank you, Mr. Zoeller. I just-- quick question about the MOU. Really, after AG Hilgers put out his Opinion, access to like the Correct-- the penitentiaries for the OIG and the Ombudsman was pretty much cut off. But in his Opinion, if I remember correctly, the Ombudsman wasn't mentioned, but access to going into the facilities was cut off. Why was that?

KENNY ZOELLER: Yeah, that's a great question, Senator. I think specifically because-- and I'm not an attorney, but there's-- you can easily draw a line between access given by the executive branch to the Legislature, to the, to the OIG and then also the Ombudsman. So if we're providing the same level of access to the legislative branch, regardless of who the employee is, and our chief legal counsel, the Attorney General, tells us that's unconstitutional, we need to make sure to remedy that. Which is why essentially the access to the system was shut down.

McKINNEY: But but in the Constitution, the Legislature has control of management of the penal institutions. And that's what I was always concerned of, how could you cut off the access to the Ombudsman. Especially because after that happened, I went inside and it created a lot of issues with a lot of the men inside because a lot of their grievances and things were not being answered.

KENNY ZOELLER: Yeah, that's a great question. You know, I'm aware of that constitutional revision. The Legislature, as you, as you are aware, has given that authority to administer our prison systems to the executive branch. So once the Legislature, in my understanding of how it works, once you all give us the authority to administer that, the constitutional protections of the separate but co-equal branches of government that the Attorney General has lined out then play into effect. So if we're the ones administering that department, you know, we have to ensure that the clear lines in this-- the clear and distinct lines of co-equal branches of government is still adhered. And while I know we had it-- we had a shift in terms of information being accessible to either the OIG or the Ombudsman's Office, that was

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temporary. And I think my understanding is once we entered into this MOU in February of last year, unless there's something that I'm unaware of, we've had a great line of communications between the Department of Corrections and both the Ombudman's and Inspector General, and I'm unaware of any instance where those two offices have not been able to get the information they need.

McKINNEY: Yeah, but I guess the Supreme, Supreme Court also ruled that attorneys general's opinion is that, just an opinion. It's not law. And I just, my concern going forward is that although he might issue an Opinion, unless it's something is adjudicated in the courts and something happens in the courts, why are we going against the law and the current practice which harm people in the process?

KENNY ZOELLER: That's a great question. And once again, I'm not an attorney, but to try to make it make sense in my simple mind as a nonattorney, if my chief legal officer is telling me, hey, that's unconstitutional, don't do it, or that's illegal, don't do it, I'm probably going to listen to my legal team-- or the chief legal officer of the state of Nebraska at that time.

McKINNEY: All right. Thank you.

KENNY ZOELLER: Yep.

HANSEN: Seeing no other questions. Thank you very much.

KENNY ZOELLER: Thank you.

HANSEN: A side note. Urban Affairs, which is going to be in this room, is now moved to 1003.

JULIE ROGERS: Good afternoon.

HANSEN: Welcome.

JULIE ROGERS: Chair Hansen and members of the Executive board, my name is Julie Rogers, J-u-l-i-e R-o-g-e-r-s, and I serve as public counsel or the Ombudsman. We are a division of the Legislature, and our division currently includes the offices of inspectors general. Our charge is to investigate complaints about state government and work toward resolution of issues through verification of facts, understanding policies and investigating the circumstances around problems with state government, ultimately making recommendations for improvement. Because the office of-- the office is independent of the agency that investigates, it is impartial on issues between

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administrative agencies and citizens and promotes reasonable and informal resolution of citizen complaints. As Speaker Arch mentioned, there are four areas that we need access to in order to do our work: Information, people, facilities, and for the offices of inspectors general, critical incidents and data. Without this information, our offices cannot meet our statutory obligations. Talked about the Attorney General's Opinion, and after we have worked under a memorandum of understanding, we have been able to get information with Corrections. We are accessing that information that we need efficiently from the Nebraska Department of Correctional Services case management system, it's called NICAMS, and they have reinstated much of our access soon after the MOU was signed. The Department of Health and Human Services, our access to the DHHS case management system, N-FOCUS, that we had prior to the Opinion has not been restored. And we request information and it is provided on a secure site. What used to take about ten minutes to look up is now taking days to get. And big files are uploaded, it, it is time-consuming, and we're not sure what information is out there and what information to request. We do have access to people with certain processes as outlined with the MOU, and we have been able to visit all the DHHS facilities and prisons. Except for juvenile probation, the inspectors general believe they have been receiving critical incidents about deaths and serious injuries and have received statutorily required reports. I believe that LB298 clarifies and codifies much of what the offices do and how we operate. To the extent that this has been a misunderstanding of our rules and how we function, we are anxious to get statutory clarity on how to move forward with our important independent work for the Legislature and for the public. The inspector generals are here today as well, if there are any questions particular to our offices. Thank you.

HANSEN: Thank you. Any questions from the committee? Seeing none. Thank you.

JULIE ROGERS: Thank you.

HANSEN: Anybody else wishing to testify in the neutral capacity?

STEPH MEESE: Good afternoon, Chairman Hansen and members of the board. My name is Steph Meese, and that's S-t-e-p-h M-e-e-s-e, and I'm the Legislative Auditor and supervise the staff and work of the Legislative Audit Office. And under LB298, our office would be part of the new oversight division. So I just wanted to just get up just briefly to provide an opportunity to answer any questions that any of you might have about our office and the function and the impact of

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this legislation on our function. And then wanted to also state our office's appreciation for the LR298 Legislative Oversight Review Committee for their interest in preserving and protecting legislative oversight, and to thank the Speaker as well for involving our office in the process and ensuring that the bill and the new division would preserve our office's independence and ability to continue to adhere to government auditing standards. So with that, I'm happy to answer any questions.

HANSEN: Senator Ballard.

BALLARD: I have a quick question.

STEPH MEESE: Yeah, absolutely.

BALLARD: Does your office have the bandwidth to undergo this oversight activity, or will you need to add additional employees, additional FTEs?

STEPH MEESE: Yeah, well, we'll just be one function under this new legislative division. So our office will continue to function as it does. And then the IG's function will be, you know, parallel running with us.

BALLARD: OK.

STEPH MEESE: I mean, we could do a bit more, I would say, but we couldn't add a ton of capacity without adding individuals. But we could do more oversight activities depending on the direction of the committee so.

BALLARD: OK, thank you.

STEPH MEESE: Yeah, absolutely.

HANSEN: Thank you for being here.

STEPH MEESE: Thank you.

HANSEN: Anybody else wish to testify in a neutral capacity?

TREVOR FITZGERALD: Good afternoon, Chairman Hansen and members of the Executive Board. For the record, my name is Trevor Fitzgerald, T-r-e-v-o-r F-i-t-z-g-e-r-a-l-d, I serve as senior research consultant for the Executive Board. As indicated by Speaker Arch, I'm testifying in a neutral capacity to address any technical questions members of

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the board may have regarding the provisions of LB298 and AM238. I will point out in a response to a question Senator McKinney had about legislative employees, all legislative division employees have grievance rights in existing legislative policies. And there are also existing legislative policies which govern the procedures for employee discipline within legislative divisions. So regardless of which division those in place are going to be in, those, those grievance rights and procedures remain the same. There was a real quick conversation about confidentiality during the Attorney General's testimony. I just want to note, draw the board's attention to the fact that Sections 17, 44 and 66 of the bill contain new language, both in the IG statutes and the Division of Legislative Oversight statutes governing the access to confidential information and penalties for unlawful disclosure that mirror those provisions that are currently in the Performance Audit committee-- or sorry, the Performance Audit Office statutes. But with that, I'd be happy to answer any additional technical questions.

HANSEN: Seeing no questions--

TREVOR FITZGERALD: Thank you.

HANSEN: --thank you very much. Any other-- body else wishing to testify in the neutral capacity? Seeing none. Speaker Arch, would you like to close? And with that, we did have some letters of the record. We did have 6 letters in support of LB298, 0 opposed and 1 in the neutral capacity.

ARCH: Well, thank you very much. Thank you for your attention today. Thank you for the questions today. I think the testimony was good. I think we have a full appreciation for the complexity of the subject before us. And I think that, I think that we have willingness on the three branches to participate in trying to find a resolution to this issue. And with the respect of the separation of powers. So with that, I will stop. But I, but I-- there's, there will obviously be a lot of discussion between the branches going forward now to try to address the issues and see if we can, and see if we can come to a resolution. So I would ask that you please don't exec on this bill immediately and that we have the time to have more of those discussions. Thank you.

HANSEN: All right. Any questions from committee? Seeing none. Thank you very much. That will close the hearing for LB298. And then we will open it for LB579.

M. CAVANAUGH: Hi.

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HANSEN: We'll welcome Senator Machaela Cavanaugh to open on LB579.

M. CAVANAUGH: Hi. My name is Machaela Cavanaugh, M-a-c-h-a-e-l-a C-a-v-a-n-a-u-g-h, I represent District 6 in west central Douglas County. My bill just makes it so that we aren't charged as legislators for records requests that we make. I could go into it more, but I think we can probably talk about it individually, if you'd like. I'm open to any questions you have. I did not ask for anybody to come testify on this. I don't know if anyone is testifying.

HANSEN: OK. I like that opening. Any questions? Speaker Arch.

ARCH: I have so many questions.

M. CAVANAUGH: Oh boy. OK.

ARCH: No, I don't.

M. CAVANAUGH: Great. I'm ready for them.

ARCH: I, I-- this issue was raised during the LR298.

M. CAVANAUGH: Mm-hmm.

ARCH: And in it is not in the draft of, of LB298 at this point. I think one of the challenges, and we've talked about this, one of the one of the challenges we have is an office of a senator has a constituent who calls and says, I've got a constituent who's having trouble with receiving services. And so we call DHHS and, you know, so-- and that's like a, I say, a different level of, of information being requested by an office of the senator.

M. CAVANAUGH: Yeah, that's completely outside of what this would be.

ARCH: So and so then it's, it's in the language of what then is this, you know? What do-- what are these requests that are being made to another agency or department?

M. CAVANAUGH: So I mean, they can be anything that isn't-- that is-- that the public could make the same request. So it's a public records request. But it is saying that the Legislature, members of the Legislature, in our capacity as state legislators, cannot be charged for those requests. The requests that the public make that they might be charged for, they cannot charge us for those same requests. And I brought this because there is statute that says very clearly that this is under the purview of our job. However, the executive branch has

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decided to interpret that the Legislative Council means this committee, even though the statute clearly states that the Legislative Council is all members of the Legislature. And if they would to-- were to interpret the statute as it is written, then this would not be necessary. But since they have chosen that it has to be just this committee is the Legislative Council, then the options are to bring every, every senator to bring every records request to this committee for approval, for the committee to then make the request, or to go through the normal public records, which is what we typically do as senators. We use the public records request language to request documents. They-- it's just been in the last several years that they have kind of like death by fiscal note, started attaching large sums of money to it. And so the, the options are give up-- which is oftentimes the intent-- put a request in to the Exec Board to pay the invoice to obtain the records-- which is something that I could do, but I have not done myself personally-- or to parse them out into smaller requests so that they don't charge. And that is an option that I have utilized in the past, is to create then smaller requests, a series of individual requests so that they don't charge me for them. But that is actually more work for them and for my office than just working on the initial request. It used to be that if I made a pers-- like if my office made a request and it was really broad that the-- someone within the administration of purview would contact my office and say: This is really broad. I'm not sure that this is what you wanted, let's talk about what you want. We work through that. We rewrite the request and we narrow the scope to what was the intention. And that's previously worked really well. But the ongoing trend is to not do that, to just a blanket: You have to pay X amount of money for this request. So and I will say that sometimes requests start out broader than they need to be because don't want to give away that perhaps something was-- information was brought to me by an employee and I don't want to cause harm to that employee, but I do want to see if there's any validity in the concerns that they've expressed so.

ARCH: OK, thank you.

M. CAVANAUGH: Yeah.

HANSEN: Senator Dorn.

DORN: Thank you. Thank you for being here. I guess what, what-- about what dollar amount are they looking at when they, I call it, give you a bill or, or--

M. CAVANAUGH: Yeah.

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DORN: --is it is-- I just [INAUDIBLE]?

M. CAVANAUGH: Great question. It, it can run the gamut from, you know, a couple hundred dollars to I once received one for \$67,000. So yeah.

DORN: And you didn't pay that one?

M. CAVANAUGH: I did not. That's the one that I broke down into smaller requests.

DORN: Yeah.

M. CAVANAUGH: Which, because they have to discount a certain number of attorney hours for each request they can't charge. So I just broke it down and repeatedly into smaller increments.

DORN: And you generally got the information you needed? Somewhat?

M. CAVANAUGH: Yeah.

DORN: OK.

M. CAVANAUGH: Somewhat. I got enough information at one point to determine that I didn't need more information. Which could have been handled a little bit quicker, but, you know, my thoughts.

HANSEN: Seeing no other questions. Are you staying to close or--

M. CAVANAUGH: Sure.

HANSEN: OK.

M. CAVANAUGH: I might waive it.

HANSEN: OK. OK. So we'll see if there's anybody who is wishing to testify in support of LB579. Seeing none, anybody wishing to testify in opposition to LB579? Welcome.

MICHAEL DONLEY: Good afternoon, Chairman Hansen, members of the Executive Board. My name is Michael Donley, M-i-c-h-a-e-l D-o-n-l-e-y, I'm the general counsel of the Department of Admin-- Administrative Services, and I'm here to testify in opposition to LB579. I will present testimony today that illuminates the reasons enterprisewide the executive branch opposes LB579. My understanding is I have three minutes, so I'm going to blaze through this, and there's some details in the handout. First, my experience with public records. I've been an attorney for about 20 years. I spent ten years in private practice,

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mostly as a commercial litigator. More relevant to today's testimony, I also spent ten years as the general counsel for state agencies and a couple of years as an inspector general and ten years as a public records officer. I care deeply about government transparency. The executive branch opposes LB579 for four primary reasons. First, at a time of fiscal restraint-- when fiscal restraint is essential, LB579 is potentially a blank check. The cost to respond to a public records request can vary significantly depending on the complexity of the request and the volume of the records involved. One tool that limits the scope and cost of public records requests is the fee authorized by statute. This fee is limited to the actual costs of making the documents available and not any personnel time in the first eight hours of the agency work. Making the service free will likely lead to sudden increase in demand. As we all know, when costs are divorced from benefits, volumes often soar. LB579 would eliminate requesters' incentives to reasonably tailor their requests. Second, LB579 presents serious concerns regarding whether it is an unconstitutional violation of the separation of powers. Generally it is unconstitutional for one branch of government to directly pay for another branch's activities or for one branch to assert control over the personnel of another branch. A law that requires unlimited forced effort by one branch of government at the behest of another branch of government certainly violates the principal of separation of powers. Third, LB579 is unnecessary because members of the Legislature can already ask for waivers of the public records request fees, and there is already no charge for the first eight hours of work. Fourth, the unintended consequences of LB579 could be severe. There's no guarantee that this exemption will only be used for legislative purposes under the current law as requesters often share responses broadly. This exemption could be used for political or constituent ends. Free requests will tempt requesters to go on broad fishing expeditions. This could create a system ripe for expense, abuse and political gamesmanship. In conclusion, we respectfully request the Executive Board not advance LB579. Thank you for your time and efforts. Happy to answer any questions.

HANSEN: Thank you. Are there any questions from the committee? Seeing none, thank you very much. All right. Would you like-- would Senator Machaela Cavanaugh like to close?

M. CAVANAUGH: Do you want to say neutral?

HANSEN: Anybody in-- would like to testify in the neutral capacity? Seeing none.

M. CAVANAUGH: My staff might have. Well, thank you for that testimony from the Department of Administrative Services. I, I, I'm not sure if the intention was to speak to this as a opening up of free records requests for everyone. Just to reiterate, it is just for the Legislature in our capacity of doing oversight. And I, I get concerned about the notion that what we do is for some sort of political agenda. I personally have never made any records requests because I had a political agenda. I make records requests because people bring up concerns to me about what is going on in government, and it is our job to shed some light on what is happening in government. And I have only brought forward things that I have discovered and my office has discovered that I think are of concern to the Legislature and to the citizens of Nebraska. I do not have a political vendetta against anyone. I cherish the fact that we are all public servants, including the executive branch, is all public servants. And I only root for our success. Because when we are successful, Nebraska is successful. So with that, I have nothing else to say unless you want me to.

HANSEN: Any questions from the committee? Seeing none.

M. CAVANAUGH: My shortest hearing ever.

HANSEN: All right. And for the record, there were 12 letters in support of LB579, 0 in opposition and 0 in the neutral capacity. So with that, that will end the hearing for LB579 and the hearing for today.