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Government, Military and Veterans Affairs Committee  
January 22, 2016

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[LB677 LB764]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Friday, January 22, 2016, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB677 and LB764. Senators present: John Murante, Chairperson; Tommy Garrett, Vice Chairperson; Dave Bloomfield; Joni Craighead. Senators absent: Mike Groene; Matt Hansen; Tyson Larson; and Beau McCoy.

SENATOR MURANTE: Welcome to the Government, Military and Veterans Affairs Committee. My name is John Murante; I'm the Chairman of this committee. I'm the state senator for District 49 which includes Gretna and northwest Sarpy County. We are here today for the purpose of discussing two legislative bills and conducting public hearings on them. We will be taking those bills up in the order they appear on the agenda outside of this room. Before we begin with the formalities, let me introduce the members of the committee. As you can see, not many of whom are here, but I'm sure they're making their way down as we speak. To my far left, Sherry Shaffer is our committee clerk. To her right is Senator Joni Craighead from Omaha. State Senator Beau McCoy, also from Omaha, will not be here today. He is in Delaware having assumed the presidency of the Council for State Governments, so he's representing our state there. State Senator Matt Hansen, I anticipate being here; he represents Lincoln, Nebraska. To my immediate right is Andrew La Grone, he is our committee's research analyst. To his right, state Senator Tommy Garrett of Bellevue, Nebraska. Senator Garrett is the Vice Chairman of this committee. To his right, Senator Dave Bloomfield from Hoskins, Nebraska; followed by Tyson Larson from O'Neill. And Mike Groene from North Platte; Senator Groene has indicated to me that he has a meeting in North Platte so he had to leave as quickly as humanly possible to get there. If you intend on testifying, come on in, on either of the bills before us today, we ask that you fill out this green sheet of paper that is located on either side of the room. If you do not wish to testify, but are here and wish to register support or opposition for any of the proposals before us, we ask that you sign in on a sheet that looks exactly like this also located on either side of the room where you can indicate your support or opposition for any matter before us. If you testify, we ask that you please state and spell your name for the record which is very important for our transcribers office. Our order of business is that the introducer of bills will be allowed to make an opening statement. We'll then hear from the proponents, the opponents, the neutral testimony, and the introducer of the bill will then be permitted a closing. We ask that you listen carefully and try not to be repetitive. We do use the light system here in the Government Committee. Each testifier is permitted four minutes to speak. When the amber light comes on, you have one minute remaining and we ask that you begin wrapping up your testimony. When the red light comes on, we ask that you close your testimony at which time we will open the committee to any questions they may have for you. If you have a prepared statement or exhibit, any handouts to give to the committee members, we ask that you give your handouts to the pages who will distribute them to the committee. We do need 12 copies. If you do not have 12 copies, again,

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give it to the page, they'll make copies for you and distribute it to the committee. We ask that you turn off any electronic devices, anything that makes noise, at this time. We'll also note that this committee is technologically equipped, so if you see any members with laptops, cell phones, i-Pads, things like that, they're taking notes and listening to your testimony. Without any further ado, we'll proceed to the first item on the agenda, LB677, by Senator Craighead. Senator Craighead, welcome.

SENATOR CRAIGHEAD: Good afternoon, Chairman Murante and members of the committee. My name is Joni Craighead, J-o-n-i C-r-a-i-g-h-e-a-d. I represent Legislative District 6 in Omaha and Douglas County. I come before you today to introduce LB677 at the request of the Department of Veterans Affairs. This bill would amend Section 80-410. LB677 removes unidentified language that causes confusion regarding veterans status for applicants pursuing employment with the Nebraska Department of Veterans Affairs. Approximately four years ago, Nebraska Department of Veterans Affairs opened the Nebraska Veterans Cemetery in Alliance, Nebraska. According to state law, the non-veteran employees, such as maintenance staff, would be considered special help as they were not veterans and they were not clerical. Instead of vague constraint on which personnel meted veteran status, LB677 instead itemizes specifically the positions that require veteran status and allows non-veterans to hold all other positions as needed. The second part of LB677 reduced residency requirements for state veteran service officers. This concept is a reflection of statute changes made in 2014 by LB737, Senator Dubas, for county veteran service officers. LB677 would reflect changes realized by modern veterans that are more transient in nature and who would otherwise be qualified to be hired as an effective state services officer. The effects of this legislation will streamline government by removing undefined terms from statute and ensure a larger talent pool for applicants wishing to be a state veteran service officer. I appreciate your consideration and am happy to answer any questions. [LB677]

SENATOR MURANTE: Thank you very much for your testimony. Senator Garrett, do you have any questions? [LB677]

SENATOR GARRETT: Nope. [LB677]

SENATOR MURANTE: Seeing none, thank you very much for opening. We'll now proceed to proponent testimony. Mr. Hilgert, welcome back to the Government, Military and Veterans Affairs Committee. [LB677]

JOHN HILGERT: Thank you, Senator, appreciate it. Good afternoon, Mr. Chairman, members of the committee, my name is John Hilgert, J-o-h-n H-i-l-g-e-r-t, and I'm the director of the Nebraska Department of Veterans Affairs. I'm here today to testify in support of LB677. I'd also

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like to thank Senator Craighead for introducing this bill. LB677, again, would revise language in state law that currently requires all positions within the Nebraska Department of Veterans Affairs to be held by veterans, except for certain special and clerical help. The new language would instead identify those positions we feel should legislatively be mandated to be veterans. LB677 also reduces the required residency to be eligible as a state service officer from five years down to one year. This language is modeled after similar change for county veteran service officers passed by the Legislature in 2014. Our state service officers work out of the VA regional office located here in Lincoln and are an important resource to our veterans in obtaining benefits and play a significant role in the over \$500 million in U.S. VA funds that come into Nebraska each year. This change would benefit veterans who wish to make Nebraska their permanent residence and would increase the talent pool eligible to serve in Nebraska...serve Nebraska's veterans as state service officers. This concludes my testimony. I'd be more than happy to answer any questions that you might have. [LB677]

SENATOR MURANTE: Thank you very much. Any questions? Seeing none, thank you very much for coming down. [LB677]

JOHN HILGERT: Thank you. [LB677]

SENATOR MURANTE: Much appreciate it. Additional proponents wishing to speak on LB677? Any opposition testimony? Any neutral testimony? Senator Craighead, you are recognized to close. Senator Craighead waives closing. And that ends the hearing on LB677. We'll proceed to the next item on the agenda, LB764. Senator Garrett. [LB677]

SENATOR GARRETT: Wish they were all this easy. [LB764]

SENATOR MURANTE: (Laughter) It goes quick when Senator Bloomfield is not here. (Laughter) [LB764]

SENATOR GARRETT: Yeah, really. Good afternoon, Chairman Murante, and esteemed members of the Government, Military and Veterans Affairs Committee. I am Tommy Garrett, T-o-m-m-y G-a-r-r-e-t-t. I represent District 3 in Sarpy County which includes parts of Bellevue and Pappillion. LB764 establishes a Summary Article 15 under Nebraska Code of Military Justice, or UCMJ, and outlines the procedures for implementation and approved disciplinary punishments. The proposed legislation gives National Guard commanders the options to address minor and noncriminal disciplinary violations through an administrative process rather than a criminal process. The process is under the control of commanders and handled at the unit level to increase transparency. The potential punishments under the legislation are administrative in nature and minor in severity. Passage of this legislation will address National Guard

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commanders' complaints that the disciplinary process currently in use takes the process out of the commanders' control, that the current process is not visible to service members in the unit, that the current process is too limiting with regard to potential punishments, that the punishments under the current process are too severe in most cases, and the current process takes too long. The new process is command-directed and handled within the unit. This will provide more visibility to members of the unit and serves as a deterrent. The new process is more informal and will expedite this position of the respective disciplinary matter. The Summary Article 15 procedures authorize additional punishments which are less severe to provide more flexible, realistic, and appropriate discipline for minor offenses. We're not trying to be heavy-handed here. These punishments would allow commanders to have at their disposal are: arrest in quarters for not more than five consecutive days; restriction to certain specified limits, with or without suspension from duty, for not more than seven consecutive days; forfeiture of pay not to exceed the pay from one unit training assembly or retention of one month's pay for a period of up to three months; and finally, extra duty, including fatigue duty, not to exceed ten days. As a retired colonel, having served in several command positions, I understand the need for General Bohac and other commanders to have these tools available to maintain good order and discipline. Very few things have a greater impact on war-fighting readiness than our ability to accomplish the mission than good order and discipline. With that I'd be happy to take any questions that you might have. [LB764]

SENATOR MURANTE: Thank you, Senator Garrett. Are there any questions? Seeing none, thank you very much for your opening. [LB764]

SENATOR GARRETT: Thank you. [LB764]

SENATOR MURANTE: Much appreciate it. We'll proceed to proponent testimony to LB764. Proponents. Welcome. [LB764]

BRIGADIER GENERAL RICHARD DAHLMAN: (Exhibit 1) Thank you. Senator Murante, members of the Government, Military and Veterans Affairs Committee, I am Brigadier General Richard, R-i-c-h-a-r-d, Dahlman, D-a-h-l-m-a-n. I'm Deputy Adjutant General for the Nebraska Military Department and I'm representing Major General Daryl Bohac, the Adjutant General of the Nebraska National Guard who is attending an event in Washington, D.C., with the Commander of the U.S. Strategic Command on behalf of Governor Ricketts. Today I'm offering testimony in support of LB764 which establishes Administrative Summary Article 15 under the Nebraska Code of Military Justice. The proposed legislation outlines procedures for implementation of military disciplinary punishments for minor offenses under the Uniform Code of Military Justice of the United States, or other military or civilian laws which carries a maximum penalty of confinement of one year or less. Let me be clear, under this legislation, the

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appropriate civilian law enforcement and civilian judicial system will continue to retain criminal jurisdiction over service members for all federal, state, and municipal crimes. The legislation creating the Article 15 was drafted with the intent of giving National Guard commanders additional administrative tools necessary to maintain good order and discipline within the ranks. From commanders at the company grade level with 250 soldiers under them to the Wing Commanders who manage over 850 Airmen, our leaders need structure that allows them to address minor military offenses such as repetitive tardiness, absent without official authority or disrespectful behavior towards superiors or fellow service members before these minor issues become large-scale problems for service members that could jeopardize their military career or their civilian lives. Currently, National Guard commanders only have the ability to take harsh career ending actions for minor misconduct such as administratively separating or firing a service individual. The Summary Article 15 puts in place clear guidance for commanders on what type of disciplinary action is able to be imposed while also laying out procedures for accused service members should they feel they have been unjustly punished. The Nebraska National Guard supports the legislation and the clarity of authority it gives leaders to address minor disciplinary violations through a nonjudicial administrative process. The Summary Article 15 amendment to the Nebraska Code of Military Justice is the first step towards the Nebraska Military Department's efforts to modernize the military code to ensure the leaders have the resources to effectively manage their soldiers and airmen. The agency asks the committee to support LB764 and its efforts to create an administrative process that clarifies procedures for commanders and rights of service members while also establishing clear lines of authority. To be clear, this is a Title 32, an issue which is going to be toward your Nebraska National Guard. I thank Senators Garrett, Bloomfield, Craighead, Crawford, Krist, and McCollister for their support and efforts in advancing LB764. Myself and the Nebraska Command Judge Advocate, Major Ingolf Maurstad are available to answer any questions from the committee at this time. [LB764]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, but I do want to welcome Mr. Maurstad to the committee for the first time. He's a fraternity brother of mine and our research analyst's and a former...the son of a Lieutenant Governor and former state senator and, probably, a future state senator himself if I had to put money on it. So it's good to see you here, Mr. Maurstad. [LB764]

INGOLF MAURSTAD: Thank you. You're embarrassing me. (Laughter) [LB764]

SENATOR MURANTE: Are there additional proponents wishing to speak on LB764? Are there any opponents? Any neutral testifiers? Welcome. [LB764]

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DOUG WILKEN: (Exhibit 2) Thank you. Senators, my name is Colonel Retired Doug Wilken, last name is spelled W-i-l-k-e-n, first name, Doug, D-o-u-g. I am the former Staff Judge Advocate for the Nebraska National Guard and the initial drafter of LB764. And I wanted to testify here today to give some background as to why this bill was drafted. The impetus for this legislation was an incident of misconduct that occurred during a period of state active duty in response to the Missouri River flooding some years ago. The Commander wanted to discipline the soldiers for their misconduct, but because of the way our code was written and the short nature of state active duty missions they were unable to affect any type of discipline in time. The reality of the situation was that to impose even minimum administrative punishment under the current statutes, the members would have had to been extended on state active duty. And then if they would have been presented with this administrative punishment, they had the option to decline and go to court-martial. Under our statutes, we don't have the ability to conduct the court-martial. And so they, effectively, could have avoided any type of punishment by just simply demanding a court-martial. So this amendment is an attempt to put in place a minimum level of discipline that a commander can use that does not permit the soldiers to decline and request a court-martial. When I drafted this, I used the Summary Article 15 used by the United States Military as a framework. And we modified that to meet the realities of the National Guard. This is not meant to address issues of the active duty. The National Guard is unique in its mission and performing state-active duty. And that we have a joint-service, if you will, with the Air Force and the Army. On the active duty side, their rules are different. For the National Guard, we have one code and that is in our state statutes. What I traded was minimal punishments for narrowing of the time involved in taking disciplinary action and also the reduction in administrative procedures. Because of the short duration of state active duty, commanders need to act quickly. They can't delay this while the accused takes the opportunity to go seek counsel and then have counsel represent them. Because oftentimes, on state active duty, there are no JAG officers available. We were just never put on state active duty for those types of missions. So, JAGs are just simply not there to assist the commanders at these points in time or the accused. So in putting in the punishments, I used arresting quarters, which is simply that the commander would tell them to remain in their quarters or in their tent for that whatever period of time set. They could restrict them to specific limits, stay on post, stay in the company area. They would forfeit pay not to exceed one unit training assembly which is, actually, one-quarter of one month's drill pay. Or they can retain pay for up to three months, which means they would get the pay back, but they would just hold it for three months. And then extra duty is just simply as it's described. So what the attempt was here was to give commanders an ability to impose discipline on state active duty and other duty statuses that could be done quickly in the amount of time that a commander has the soldier available to them on state active duty--a drill weekend, annual training. And to have simplified procedures to also expedite that process, but yet only be able to impose minimal punishments because of the expedited nature of this process. And this was something that commanders had requested for a long time. And we've been working to get there on this and this

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was going to be my first attempt at that. Unfortunately, I retired before it happened. So if you have any questions, I'll answer those for you. [LB764]

SENATOR MURANTE: The only question I have is you're testifying in a neutral capacity today. Is there something about the bill that concerns you that would make you not support it? [LB764]

DOUG WILKEN: No, there's nothing about the bill that concerns me. I testified in neutral capacity just simply because I'm retired. And I'm also employed by the state right now. And so, just because of my position I felt that it would be better not to go either direction. [LB764]

SENATOR MURANTE: Okay. Understood. Thank you very much. Any questions? Seeing none, thank you very much for your testimony. [LB764]

DOUG WILKEN: Thank you. [LB764]

SENATOR MURANTE: Much appreciate it. Additional neutral testimony on LB764? Seeing none, Senator Garrett. [LB764]

SENATOR GARRETT: I'll take the opportunity to close. Again, I couldn't believe it when I originally heard a year ago that the National Guard didn't have nonjudicial punishment Article 15 capability. It's something that we on the active duty forces, when I was active duty as a commander, we regularly used. I mean you've got to have something short of a court-martial to get somebody's attention. And that's really what this is. And the punishments are very limited. But it's to get somebody's attention short of actually going through with it with a court-martial. So it's something, I think, the National Guard, I think, could really use commanders. [LB764]

SENATOR MURANTE: Okay. Senator Bloomfield. [LB764]

SENATOR BLOOMFIELD: Thank you. Having been the recipient, and not real proudly, of an Article 15 in basic training, it is effective. After you peel several hundred pounds of potatoes and wash a lot of dishes, it will get your attention. [LB764]

SENATOR GARRETT: That additional duty, back in the day, used to be KP, kitchen patrol, and peeling potatoes and those kinds of things, yeah. They actually...UCMJ, the Uniformed Code of Military Justice, still has in there as one of the punishments--if you're deployed at sea, as a seaman, you can get confined to quarters with bread and water. I mean that's...the old bread and water thing is still in there for...so....but anyway, this is a good bill and I was proud to be able to bring it for General Bohac and the Nebraska National Guard. Thank you. [LB764]

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SENATOR MURANTE: Any final questions? Seeing none, thank you very much, Senator Garrett. That closes the hearing on LB764, and ends our hearings for the day. Everyone enjoy your weekend. [LB764]