

LEGISLATIVE BILL 556

Approved by the Governor April 17, 1992

Introduced by Baack, 47; Hefner, 19; Wesely, 26;
Beutler, 28; Coordsen, 32; Morrissey, 1;
Schellpeper, 18; Smith, 33; Schimek, 27;
Ashford, 6

AN ACT relating to public offices; to amend sections 49-1499 and 49-14,123, Reissue Revised Statutes of Nebraska, 1943; to adopt the Campaign Finance Limitation Act; to change a provision relating to conflicts of interest involving members of commodity boards; to provide powers and duties for the Nebraska Accountability and Disclosure Commission; to provide an operative date; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 10 of this act shall be known and may be cited as the Campaign Finance Limitation Act.

Sec. 2. The Legislature finds that the cost of running for statewide offices and legislative seats has risen greatly and that many qualified candidates are excluded from the democratic system as a result of such rising cost. The Legislature further finds that the United States Supreme Court has indicated that any limitation on campaign expenditures must be entered into voluntarily and that the utilization of public financing of campaigns is a constitutionally permissible way in which to encourage candidates to adopt voluntary campaign spending limitations. The Legislature further finds that using public funds to assist in the financing of campaigns for certain statewide offices and legislative seats, in conjunction with voluntary campaign spending limitations, will increase the number of qualified candidates able to run for office.

Sec. 3. For purposes of the Campaign Finance Limitation Act, the definitions found in sections 49-1404 to 49-1444 shall be used, except that:

(1) Election period shall mean the calendar year of the election; and

(2) Expenditure shall mean the purchase for campaign activities of (a) services from a communications medium, including production costs, (b)

printing, photography, graphic arts, or advertising services, (c) office supplies, (d) postage and other commercial delivery services, (e) meals, lodging, and travel expenses, and (f) staff salaries.

Sec. 4. (1) Any candidate for Governor, Lieutenant Governor, State Treasurer, Secretary of State, Attorney General, Auditor of Public Accounts, the Legislature, the Public Service Commission, the Board of Regents of the University of Nebraska, or the State Board of Education may qualify for public funds to be used for the election period if he or she limits his or her campaign spending for the election period and meets the other requirements prescribed in this section.

(2) To qualify for public funds for the election period, a candidate for Governor shall limit his or her spending for the election period to one million five hundred thousand dollars, a candidate for Lieutenant Governor, State Treasurer, Secretary of State, Attorney General, or Auditor of Public Accounts shall limit his or her spending for the election period to one hundred fifty thousand dollars, and a candidate for the Legislature, the Public Service Commission, the Board of Regents of the University of Nebraska, or the State Board of Education shall limit his or her spending for the election period to fifty thousand dollars.

(3) Each candidate desiring to receive public funds pursuant to this section shall (a) beginning January 1 of the election period, raise an amount equal to at least twenty-five percent of the spending limitation for the office from persons who are residents of Nebraska, (b) file with the Nebraska Accountability and Disclosure Commission, on the day he or she files for the office, a written declaration of intent to abide by the spending limitations prior to raising such funds, and (c) file with the commission, on the day he or she files for the office, a written statement by which he or she agrees to personally act as a guarantor for the lawful use of such funds and agrees to be held personally liable to the State of Nebraska for any such funds not repaid to the state as required by law. Money raised prior to filing the declaration required by subdivision (b) of this subsection shall not count toward the qualifying amount established in subdivision (a) of this subsection. At least sixty-five percent of the qualifying amount established in subdivision (a) of this subsection shall be received from individuals. For purposes of this section, a business, corporation, partnership, or association shall be deemed a resident if it has an office in this state and transacts business

in this state.

(4) Any candidate who does not file the written declaration pursuant to subdivision (3)(b) of this section shall file with the commission, on the day he or she files for the office, an affidavit which shall constitute his or her written declaration of intent not to abide by the spending limitations of this section and shall include a reasonable estimate of his or her maximum expenditures as defined in section 3 of this act and section 49-1419 for the election period. The estimate of expenditures may be amended up to sixty days prior to the general election by filing a subsequent affidavit.

Sec. 5. Any individual who files to appear on the ballot for an elective office specified in subsection (1) of section 4 of this act shall file a copy of the written declaration that was filed with the Nebraska Accountability and Disclosure Commission as provided in subsections (3) and (4) of section 4 of this act at the same time and with the same official with whom the individual files for office. Candidates for an elective office specified in subsection (1) of section 4 of this act who qualify other than by filing, shall file a written declaration as provided in subsections (3) and (4) of section 4 of this act with the commission within five days after qualifying for the ballot. A filing to appear on the ballot for an office specified in subsection (1) of section 4 of this act shall not be accepted by a filing official unless a written declaration is properly filed.

Sec. 6. (1) Any candidate who has satisfied the requirements of subsection (3) of section 4 of this act may, upon spending twenty-five percent of the spending limitation prescribed in such section, file an affidavit with the commission setting forth these facts and requesting public funds. If the highest estimated maximum expenditure filed by any of the candidate's opponents for that same office in effect as of the last date to amend an affidavit pursuant to subsection (4) of section 4 of this act is greater than the spending limitation for the office, the candidate shall be entitled to receive the difference between the spending limitation and the highest estimated maximum expenditure filed by any of the candidate's opponents. The commission shall compute the amount of the payment to be made to a candidate.

(2) Public funds to which a candidate is entitled under this section shall be disbursed to that candidate two weeks after the last date to amend an

affidavit pursuant to subsection (4) of section 4 of this act.

(3) Public funds received pursuant to this section shall be kept in a separate account, shall be used only to make expenditures, and shall not be counted against the spending limitation prescribed in section 4 of this act. Any unexpended public funds shall be repaid to the state on or before December 31 of the election period.

Sec. 7. (1) Any candidate who receives public funds pursuant to section 6 of this act and fails to comply with the spending limitation prescribed in section 4 of this act shall repay the amount expended in excess of the spending limitation to the state within six months after the receipt of the public funds by the candidate.

(2) Any candidate described in subsection (1) of this section who exceeds the spending limitation by five percent or more shall be deemed to be in willful and knowing violation of section 4 of this act. Any person willfully and knowingly violating such section shall be guilty of a Class II misdemeanor and shall within six months after the violation repay the entire amount of public funds received with interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date of the violation.

(3) Any candidate who swears to the truth of an affidavit filed pursuant to section 4 of this act when the candidate knows or should have known that the affidavit contains any material element which is false shall be guilty of a Class IV felony.

(4) Any candidate who willfully, knowingly, or intentionally underestimates his or her maximum expenditures by five percent or more in an affidavit filed pursuant to section 4 of this act shall be guilty of a Class II misdemeanor.

(5) Any other violation of the Campaign Finance Limitation Act, not otherwise covered by subsections (1) through (4) of this section, shall be a Class IV misdemeanor.

(6) The expenditure of public funds received pursuant to section 6 of this act shall not be a violation of the spending limitation.

Sec. 8. During the election period, no candidate shall accept contributions from independent committees, corporations, unions, industry, trade, and professional associations, and political parties which, when aggregated, are in excess of seven hundred fifty

thousand dollars for a candidate for Governor, seventy-five thousand dollars for a candidate for Lieutenant Governor, State Treasurer, Secretary of State, Attorney General, or Auditor of Public Accounts, and twenty-five thousand dollars for a candidate for the Legislature, the Public Service Commission, the Board of Regents of the University of Nebraska, or the State Board of Education.

Sec. 9. The commission shall conduct a random audit of the accounts and records of any candidate filing a declaration of intent under subsection (3) of section 4 of this act.

Sec. 10. The Campaign Finance Limitation Cash Fund is hereby created. The fund shall be used by the commission to provide public financing of campaigns pursuant to the Campaign Finance Limitation Act, except that transfers may be made to the General Fund at the direction of the Legislature. The fund shall consist of money appropriated to it by the Legislature and amounts repaid by candidates pursuant to sections 6 and 7 of this act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

Sec. 11. That section 49-1499, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

49-1499. An individual designated in section 49-1493, or an official or employee of the executive branch of state government, who, in the discharge of his or her official duties, would be required to take any action or make any decision that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated, which is distinguishable from the effects of such action on the public generally, or a broad segment of the public, shall take the following actions as soon as he or she is aware of such potential conflict, or should reasonably be aware of such potential conflict, whichever is sooner:

(1) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict, and if he or she is a member of the Legislature and will not abstain from voting, deliberating, or taking other action on the matter, the statement shall state why, despite the potential conflict, he or she intends to vote or otherwise participate; and

(2) Deliver a copy of the statement to the commission and:

(a) If he or she is a member of the Legislature, he or she shall deliver a copy of the statement to the Speaker of the Legislature, who shall cause the statement to be filed with the Clerk of the Legislature to be held as a matter of public record. He or she may abstain from voting, deliberating, or taking other action on the matter on which the potential conflict exists, in which case he or she may have the reasons for the abstention recorded in the journal or minutes of the Legislature. Nothing in this section shall be construed to prohibit any member of the Legislature from voting, deliberating, or taking other action on any matter that comes before the body; or

(b) If he or she is not a member of the Legislature, he or she shall deliver a copy of the statement to his or her immediate superior, if any, who shall assign the matter to another or, if he or she has no immediate superior, he or she shall take such steps as the commission shall prescribe or advise to remove himself or herself from influence over actions and decisions on the matter. This restriction shall not prevent such a person from (i) making or participating in the making of a governmental decision to the extent that the individual's participation is legally required for the action or decision to be made, but in such event the person shall report the occurrence to the commission or (ii) making or participating in the making of a governmental decision if the potential conflict of interest is based upon a business association and the business association exists only as the result of his or her position on a commodity board. A person acting pursuant to subdivision (i) of this subdivision shall report the occurrence to the commission.

For purposes of this section, commodity board shall mean only the Corn Development, Utilization, and Marketing Board, the Nebraska Dairy Industry Development Board, the Grain Sorghum Development, Utilization, and Marketing Board, the Soybean Development, Utilization, and Marketing Board, the Nebraska Wheat Development, Utilization, and Marketing Board, the Dry Bean Commission, the Nebraska Potato Development Committee, and the Nebraska Poultry and Egg Development, Utilization, and Marketing Committee.

Sec. 12. That section 49-14,123, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

49-14,123. In addition to any other duties prescribed by law, the commission shall:

- (1) Prescribe and publish, after notice and

opportunity for public comment, rules and regulations to carry out the Campaign Finance Limitation Act and the Nebraska Political Accountability and Disclosure Act provisions of sections 49-1401 to 49-14,138, pursuant to the provisions of the Administrative Procedure Act;

(2) Prescribe forms for statements and reports required to be filed pursuant to sections 49-1401 to 49-14,138, the Campaign Finance Limitation Act and the Nebraska Political Accountability and Disclosure Act and furnish such forms to persons required to file such statements and reports;

(3) Prepare and publish one or more manuals explaining the duties of all persons and other entities required to file statements and reports by sections 49-1401 to 49-14,138 the acts and setting forth recommended uniform methods of accounting and reporting for such filings;

(4) Accept and file any reasonable amount of information voluntarily supplied that exceeds the requirements of sections 49-1401 to 49-14,138 the acts;

(5) Make statements and reports filed with the commission available for public inspection and copying during regular office hours and make copying facilities available at a cost of not more than fifty cents per page;

(6) Compile and maintain an index of all reports and statements filed with the commission to facilitate public access to such reports and statements;

(7) Prepare and publish summaries of statements and reports filed with the commission, and special reports and technical studies to further the purposes of sections 49-1401 to 49-14,138 the acts;

(8) Review all statements and reports filed with the commission in order to ascertain whether any person has failed to file a required statement or has filed a deficient statement;

(9) Preserve statements and reports filed with the commission for a period of not less than five years from the date of receipt;

(10) Issue and publish advisory opinions on the requirements of sections 49-1401 to 49-14,138 the acts upon the request of a person or governmental body directly covered or affected by sections 49-1401 to 49-14,138 the acts. Any such opinion rendered by the commission, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the person or public body who requested the opinion and who acted in reliance on it in good faith, unless material facts were omitted or misstated by the person

in the request for the opinion;

(11) Act as the primary civil and criminal enforcement agency for violations of the Nebraska Political Accountability and Disclosure Act provisions of sections 49-1401 to 49-14,123 and the rules or regulations promulgated thereunder and act concurrently with the county attorney in prosecuting criminal violations of the Campaign Finance Limitation Act;

(12) Receive all late filing fees and submit them to those authorities designated by law to effectuate the provisions of Article VII, section 5, of the Constitution of Nebraska, seek the return of any amount as provided in section 6 of this act, and seek the repayment of any amount as provided in section 7 of this act; and

(13) Prepare and distribute to the appropriate local officials statements of financial interest, campaign committee organization forms, filing instructions and forms, and such other forms as the commission may deem appropriate.

Sec. 13. This act shall become operative on January 1, 1993.

Sec. 14. That original sections 49-1499 and 49-14,123, Reissue Revised Statutes of Nebraska, 1943, are repealed.