

## LEGISLATIVE BILL 46

Passed over the Governor's veto June 1, 1977

Introduced by Murphy, 17

AN ACT relating to acts of the Legislature; to provide for actions to determine the validity of acts held unconstitutional by the Attorney General; and to provide for actions to force implementation of acts.

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

Section 1. When the Attorney General issues a written opinion that an act of the Legislature is unconstitutional and any state officer charged with the duty of implementing the act, in reliance on such opinion, refuses to implement the act, the Attorney General shall, within ten working days of the issuance of the opinion, file an action in the appropriate court to determine the validity of the act. In any such action filed under the provisions of this section, the Attorney General may sue as defendant any person having a litigable interest in the matter or in lieu thereof may sue the Secretary of State. If the Secretary of State is named as defendant, it shall be his duty to defend such action and to support the constitutionality of the act of the Legislature and for such purpose is authorized to employ special counsel. Notwithstanding the provisions of this section, no such action need be brought by the Attorney General if there is pending in any court of the state a legal action for the purpose of testing the constitutionality of the act. Any person having a litigable interest may be joined in the action or may intervene in the action, but shall not be deemed a necessary party in order to determine the validity of the act.

Sec. 2. When the Attorney General determines, after such investigation as shall be necessary, that any agency of state government charged with the implementation of any act of the Legislature is failing or refusing to implement such act, he shall notify the agency head by letter of such determination. If, within ten working days of the receipt of such letter, it is not established to his satisfaction that steps to implement the act are being expeditiously taken, and there is no valid reason for failing to do so, such as a failure of an appropriation, the Attorney General shall file an action in the appropriate court to compel implementation. In any such action the department head or the agency head shall defend the action. The costs and a reasonable attorney's fee as fixed by the court shall be paid out of

the appropriation to the department.

Sec. 3. This act shall be cumulative to any existing remedies which may exist.