

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 982**

Introduced by Campbell, 25; Gay, 14.

Read first time January 19, 2010

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to roads; to amend sections 39-2201, 39-2205,  
2 39-2209, 39-2211, 39-2212, 39-2213, 39-2215.01, 39-2216,  
3 39-2223, and 39-2224, Reissue Revised Statutes of  
4 Nebraska; to adopt the Build Nebraska Act; to authorize  
5 issuance of highway bonds; to harmonize provisions; and  
6 to repeal the original sections.  
7 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 8 of this act shall be known and  
2 may be cited as the Build Nebraska Act.

3           Sec. 2. The Legislature finds that the state's surface  
4 transportation system is essential to commerce and public safety  
5 and that it is in the state's interest to assist counties and  
6 municipalities to finance surface transportation projects with  
7 matching funds through the use of bonds.

8           Sec. 3. For purposes of the Build Nebraska Act:

9           (1) Commission means the State Highway Commission;

10          (2) Department means the Department of Roads;

11          (3) Department of Roads priority list means the surface  
12 transportation projects in the Nebraska Surface Transportation  
13 Program Book, Fiscal Years 2007-2012 and Beyond, as it existed on  
14 January 1, 2010, presented to the Governor by the department;

15          (4) Fund means the State Infrastructure Bank Fund; and

16          (5) Surface transportation project means (a) expansion  
17 of a road or highway which is part of the state highway system,  
18 (b) expansion or maintenance of a bridge which is part of the  
19 state highway system, or (c) construction of a new road, highway,  
20 or bridge which, if built, would be a part of the state highway  
21 system.

22          Sec. 4. (1) The State Infrastructure Bank Fund is  
23 created. The fund shall be used for the purposes described in  
24 the Build Nebraska Act.

25          (2) The fund shall consist of federal funds received by

1 the state pursuant to 23 U.S.C. Chapter 6, Infrastructure Finance,  
2 any other money as determined by the Legislature, and bond proceeds  
3 credited to the fund.

4 (3) The department may create or direct the creation  
5 of accounts within the fund as the department determines to be  
6 appropriate and useful in administering the fund and in providing  
7 for security, investment, and repayment of bonds.

8 (4) The fund and assets thereof may be used to pay or  
9 secure the payment of bonds and the interest thereon.

10 (5) Any money in the fund available for investment  
11 shall be invested by the state investment officer pursuant to  
12 the Nebraska Capital Expansion Act and the Nebraska State Funds  
13 Investment Act, except that any bond proceeds in the fund shall  
14 be invested in accordance with the terms of the documents under  
15 which the bonds are issued. The state investment officer may direct  
16 that the bond proceeds shall be remitted to the bond trustee for  
17 investment. Investment earnings from investment of money in the  
18 fund and from investment of bond proceeds shall be credited to the  
19 fund.

20 Sec. 5. (1) A county, municipality, or joint entity or  
21 joint public agency including only counties and municipalities  
22 may apply to the commission for matching funds for surface  
23 transportation projects. The commission shall review each  
24 application and recommend approval or denial to the department. In  
25 making its recommendation, the commission shall give priority to

1 surface transportation projects included on the Department of Roads  
 2 priority list. The department shall approve or deny the application  
 3 based upon the commission's recommendation and the department's  
 4 review. If the application is approved, matching funds shall be  
 5 provided as follows:

<u>Projected Cost</u>	<u>State Funding</u>	<u>Local Funding</u>
7 <u>Under \$2,000,000</u>	<u>0</u>	<u>100%</u>
8 <u>\$2,000,000 to \$25,000,000</u>	<u>70%</u>	<u>30%</u>
9 <u>\$25,000,001 to \$50,000,000</u>	<u>60%</u>	<u>40%</u>
10 <u>Over \$50,000,000</u>	<u>50%</u>	<u>50%</u>

11 (2) The department shall prepare an annual report for the  
 12 Governor and the Legislature of the applications made pursuant to  
 13 this section and the disposition of each application.

14 Sec. 6. The commission acting for and on behalf of the  
 15 state may, as authorized in the Nebraska Highway Bond Act, issue  
 16 from time to time bonds in such principal amounts as determined  
 17 by the commission for the purpose of funding the Build Nebraska  
 18 Act and the fund. The principal amount of the bonds so authorized  
 19 to be issued shall not exceed the amount for which principal and  
 20 interest may be paid when due by revenue projected to be available  
 21 from the fund and any other funds pledged by the commission for  
 22 such purpose. The principal amounts, interest rates, maturities,  
 23 redemption provisions, sale prices, and other terms of the bonds  
 24 so authorized to be issued shall be in accordance with terms or

1 conditions established by the commission. The proceeds from the  
 2 sale of any bonds issued, net of costs of issuance, capitalized  
 3 interest, and necessary or appropriate reserve funds, shall be  
 4 deposited in the fund and shall be used as matching funds pursuant  
 5 to section 5 of this act. The commission is hereby granted all  
 6 powers necessary or convenient to carry out the purposes and  
 7 exercise the powers granted by the Build Nebraska Act.

8           Sec. 7. The bonds issued pursuant to section 6 of this  
 9 act shall be special obligations of the state payable solely and  
 10 only from the fund and any other funds specifically pledged by  
 11 the commission for such purpose, and neither the members of the  
 12 commission nor any person executing the bonds shall be liable  
 13 thereon. Such bonds shall not be a general obligation or debt of  
 14 the state, and they shall contain on the face thereof a statement  
 15 to such effect.

16           Sec. 8. The department may adopt and promulgate rules and  
 17 regulations to carry out the Build Nebraska Act.

18           Sec. 9. Section 39-2201, Reissue Revised Statutes of  
 19 Nebraska, is amended to read:

20           39-2201 As used in the Nebraska Highway Bond Act, unless  
 21 the context otherwise requires:

22           ~~(1) Bond fund shall mean the Highway Restoration and~~  
 23 ~~Improvement Bond Fund created in section 39-2215.01;~~

24           ~~(2) (1) Bonds shall mean means~~ the bonds authorized to  
 25 be issued under the Nebraska Highway Bond Act and shall include

1 includes notes or other similar evidences of indebtedness;

2 ~~(3)~~ (2) Commission ~~shall mean~~ means the State Highway  
3 Commission;

4 ~~(4)~~ (3) Construction ~~shall mean and include~~ means  
5 and includes acquisition, construction, resurfacing, restoring,  
6 rehabilitation, and reconstruction necessary to plan, build,  
7 improve, replace, or extend a highway, and to construct ~~shall~~  
8 ~~mean and include~~ means and includes to acquire, to construct,  
9 to resurface, to restore, to rehabilitate, and to reconstruct as  
10 necessary to plan, build, improve, replace, or extend a highway;

11 ~~(5)~~ (4) Cost of construction ~~shall mean and include~~  
12 means and includes obligations to contractors and builders  
13 for construction and for the restoration of property damaged  
14 or destroyed in connection with such construction, the cost  
15 of acquiring land, property rights, rights-of-way, franchises,  
16 easements, and other interests deemed necessary or convenient  
17 for construction, the cost of acquiring any property, real  
18 or personal, tangible or intangible, or any interest therein,  
19 deemed necessary or convenient for construction, the interest  
20 requirements upon any bonds prior to, during, and for a period  
21 of eighteen months after completion of construction, fees and  
22 expenses of paying agents and other agents appointed by the  
23 commission for such bonds during any such period, the costs and  
24 expenses of preliminary investigations to determine the feasibility  
25 or practicability of such construction, the fees and expenses

1 of engineers for making preliminary studies, surveys, reports,  
2 estimates of costs and of revenue, and other estimates and for  
3 preparing plans and specifications and supervising construction as  
4 well as for the performance of all other duties of engineers in  
5 relation to such construction or the issuance of bonds therefor,  
6 expenses of administration during construction, legal expenses and  
7 fees, financing charges, municipal bond insurance or surety bond  
8 premiums, credit facility fees, costs of audits, costs of preparing  
9 and issuing such bonds, and all other items of expense incident to  
10 such construction, the financing thereof, and the acquisition of  
11 land and property therefor;

12 ~~(6)~~ (5) Fund shall mean means the Highway Trust Fund  
13 which is created by section 39-2215; and

14 ~~(7)~~ (6) Highway shall mean and include means and includes  
15 any public road now or at any time hereafter classified by the  
16 Legislature as the responsibility of the state to construct and any  
17 related facility, the cost of which is financed in whole or in part  
18 by the issuance of bonds under the Nebraska Highway Bond Act.

19 The Legislature hereby reserves the right to vary  
20 and change by law the definitions of construction, cost of  
21 construction, and highway contained in this section.

22 Sec. 10. Section 39-2205, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24 39-2205 Bonds may be issued under the Nebraska Highway  
25 Bond Act only to the extent that the annual aggregate principal

1 and interest requirements, in the calendar year in which such  
2 bonds are issued and in each calendar year thereafter until the  
3 scheduled maturity of such bonds, on such bonds and on all other  
4 bonds theretofore issued and to be outstanding and unpaid upon the  
5 issuance of such bonds shall not exceed the amount which is equal  
6 to fifty percent of the money deposited in the fund, the Highway  
7 Restoration and Improvement Bond Fund, or the State Infrastructure  
8 Bank Fund, or the bond fund, as the case may be, from which such  
9 bonds shall be paid during the calendar year preceding the issuance  
10 of the bonds proposed to be issued. This section shall not apply  
11 to the first issuance of each series of bonds authorized by the  
12 Legislature.

13           If short-term bonds are issued in anticipation of the  
14 issuance of long-term refunding bonds and such short-term bonds are  
15 secured by insurance or a letter of credit or similar guarantee  
16 issued by a financial institution rated by a national rating agency  
17 in one of the two highest categories of bond ratings, then, for  
18 the purposes of the Nebraska Highway Bond Act, when determining  
19 the amount of short-term bonds that may be issued and the amount  
20 of taxes, fees, or other money to be deposited in any fund for  
21 the payment of bonds issued under the act, the annual aggregate  
22 principal and interest payments on the short-term bonds shall be  
23 deemed to be such payments thereon, except that the final principal  
24 payment shall not be that specified in the short-term bonds but  
25 shall be the principal and all interest payments required to



1 reimburse the issuer of the insurance policy or letter of credit or  
2 similar guarantee pursuant to the reimbursement agreement between  
3 the commission and such issuer.

4 Sec. 11. Section 39-2209, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6 39-2209 Any resolution or resolutions of the commission  
7 authorizing any bonds or any issue thereof may contain provisions,  
8 consistent with the Nebraska Highway Bond Act and not in derogation  
9 or limitation of such act, which shall be a part of the contract  
10 with the holders thereof, as to:

11 (1) Pledging all or any part of the money in the fund,  
12 the Highway Restoration and Improvement Bond Fund, or the State  
13 Infrastructure Bank Fund, ~~or bond fund,~~ as the case may be, to  
14 secure the payment of the bonds, subject to such agreements with  
15 the bondholders as may then prevail;

16 (2) The use and disposition of money in the fund,  
17 the Highway Restoration and Improvement Bond Fund, or the State  
18 Infrastructure Bank Fund; ~~or bond fund;~~

19 (3) The setting aside of reserves, sinking funds, or  
20 arbitrage rebate funds and the funding, regulation, and disposition  
21 thereof;

22 (4) Limitations on the purpose to which the proceeds from  
23 the sale of bonds may be applied;

24 (5) Limitations on the issuance of additional bonds and  
25 on the retirement of outstanding or other bonds pursuant to the

1 Nebraska Highway Bond Act;

2 (6) The procedure by which the terms of any agreement  
3 with bondholders may be amended or abrogated, the amount of bonds  
4 the holders of which must consent thereto, and the manner in which  
5 such consent may be given;

6 (7) Vesting in a bank or trust company as paying agent  
7 such rights, powers, and duties as the commission may determine,  
8 vesting in a trustee appointed by the bondholders pursuant to the  
9 Nebraska Highway Bond Act such rights, powers, and duties as the  
10 commission may determine, and limiting or abrogating the right of  
11 the bondholders to appoint a trustee under such act or limiting the  
12 rights, powers, and duties of such trustee;

13 (8) Providing for a municipal bond insurance policy,  
14 surety bond, letter of credit, or other credit support facility or  
15 liquidity facility; and

16 (9) Any other matters, of like or different character,  
17 which in any way affect the security or protection of the bonds.

18 Sec. 12. Section 39-2211, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20 39-2211 In addition to the powers conferred upon the  
21 commission to secure the bonds in the Nebraska Highway Bond Act,  
22 the commission shall have power in connection with the issuance  
23 of bonds to enter into such agreements, consistent with the  
24 act and not in derogation or limitation of the act, as it may  
25 deem necessary, convenient, or desirable concerning the use or

1 disposition of the money in the fund, the Highway Restoration  
2 and Improvement Bond Fund, or the State Infrastructure Bank  
3 Fund, ~~or bond fund~~ including the pledging or creation of any  
4 security interest in such money and the doing of or refraining  
5 from doing any act which the commission would have the right  
6 to do to secure the bonds in the absence of such agreements.  
7 The commission shall have the power to enter into amendments of  
8 any such agreements, consistent with the Nebraska Highway Bond  
9 Act and not in derogation or limitation of the act, within the  
10 powers granted to the commission by the act and to perform such  
11 agreements. The provisions of any such agreements may be made a  
12 part of the contract with the holders of the bonds.

13           Sec. 13. Section 39-2212, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15           39-2212 Any pledge or security instrument made by the  
16 commission shall be valid and binding from the time when the pledge  
17 or security instrument is made. The money in the fund, the Highway  
18 Restoration and Improvement Bond Fund, or the State Infrastructure  
19 Bank Fund ~~or bond fund~~ so pledged and entrusted shall immediately  
20 be subject to the lien of such pledge or security instrument upon  
21 the deposit thereof in the fund without any physical delivery  
22 thereof or further act. The lien of any such pledge or security  
23 instrument shall be valid and binding as against all parties  
24 having subsequently arising claims of any kind in tort, contract,  
25 or otherwise, irrespective of whether such parties have notice

1 thereof. Neither the resolution nor any security instrument or  
2 other instrument by which a pledge or other security is created  
3 need be recorded or filed, and the commission shall not be required  
4 to comply with any of the provisions of the Uniform Commercial  
5 Code.

6           Sec. 14. Section 39-2213, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8           39-2213 The bonds shall be special obligations of  
9 the state payable solely and only from the fund, the Highway  
10 Restoration and Improvement Bond Fund, or the State Infrastructure  
11 Bank Fund, ~~or bond fund~~, as the case may be, and neither the  
12 members of the commission nor any person executing the bonds shall  
13 be liable thereon. Such bonds shall not be a general obligation  
14 debt of this state, and they shall contain on the face thereof a  
15 statement to such effect.

16           Sec. 15. Section 39-2215.01, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18           39-2215.01 (1) There is hereby created in the state  
19 treasury a fund to be known as the Highway Restoration and  
20 Improvement Bond Fund.

21           (2) If bonds are issued pursuant to subsection (2)  
22 of section 39-2223, all motor vehicle fuel taxes, diesel fuel  
23 taxes, compressed fuel taxes, and alternative fuel taxes related  
24 to highway use, motor vehicle registration fees, and other  
25 highway-user taxes which are retained by the state and allocated

1 to the ~~bond fund~~ Highway Restoration and Improvement Bond Fund  
2 from the Highway Trust Fund shall be hereby irrevocably pledged  
3 for the terms of the bonds issued after July 1, 1988, to the  
4 payment of the principal, interest, and redemption premium, if any,  
5 of such bonds as they mature and become due at maturity or prior  
6 redemption and for any reserves therefor and shall, as received  
7 by the State Treasurer, be deposited directly in the ~~bond fund~~  
8 Highway Restoration and Improvement Bond Fund for such purpose.  
9 Of the money in the ~~bond fund~~ not required for such purpose,  
10 such remaining money may be used for the purchase for retirement  
11 of the bonds in the open market or for any other lawful purpose  
12 related to the issuance of bonds, and the balance, if any, shall be  
13 transferred monthly to the Highway Cash Fund for such use as may be  
14 provided by law.

15 (3) The State Treasurer shall disburse the money in  
16 the ~~bond fund~~ Highway Restoration and Improvement Bond Fund as  
17 directed by resolution of the commission. All disbursements from  
18 the ~~bond fund~~ shall be made upon warrants drawn by the Director  
19 of Administrative Services. Any money in the ~~bond fund~~ available  
20 for investment shall be invested by the state investment officer  
21 pursuant to the Nebraska Capital Expansion Act and the Nebraska  
22 State Funds Investment Act.

23 Sec. 16. Section 39-2216, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25 39-2216 The Legislature hereby irrevocably pledges and

1 agrees with the holders of the bonds issued under the Nebraska  
2 Highway Bond Act that so long as such bonds remain outstanding  
3 and unpaid it shall not repeal, diminish, or apply to any  
4 other purposes the motor vehicle fuel taxes, diesel fuel taxes,  
5 compressed fuel taxes, and alternative fuel taxes related to  
6 highway use, motor vehicle registration fees, and such other  
7 highway-user taxes which may be imposed by state law and allocated  
8 to the fund ~~or bond fund~~, or the Highway Restoration and  
9 Improvement Bond Fund, as the case may be, if to do so would  
10 result in fifty percent of the amount deposited in the fund ~~or~~  
11 ~~bond fund~~ or the Highway Restoration and Improvement Bond Fund in  
12 each year being less than the amount equal to the maximum annual  
13 principal and interest requirements of such bonds.

14           Sec. 17. Section 39-2223, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16           39-2223 (1) Under the authority granted by Article XIII,  
17 section 1, of the Constitution of Nebraska, the Legislature hereby  
18 authorizes the issuance of bonds in the principal amount of twenty  
19 million dollars in 1969 and in the principal amount of twenty  
20 million dollars on or before June 30, 1977, with the proceeds  
21 thereof to be used for the construction of highways in this  
22 state, the Legislature expressly finding that the need for such  
23 construction requires such action. Such bonds shall in all respects  
24 comply with the provisions of Article XIII, section 1, of the  
25 Constitution of Nebraska.

1           (2) Under the authority granted by Article XIII, section  
2 1, of the Constitution of Nebraska, the Legislature hereby  
3 authorizes after July 1, 1988, the issuance of bonds in a principal  
4 amount to be determined by the commission, not to exceed fifty  
5 million dollars. The outstanding principal amount of such bonds  
6 may exceed such limit if and to the extent that the commission  
7 determines that the issuance of advance refunding bonds under  
8 section 39-2226 in a principal amount greater than the bonds to  
9 be refunded would reduce the aggregate bond principal and interest  
10 requirements payable from the ~~bond fund~~. Highway Restoration and  
11 Improvement Bond Fund. The proceeds of such issues shall be used  
12 exclusively (a) for the construction, resurfacing, reconstruction,  
13 rehabilitation, and restoration of highways in this state, the  
14 Legislature expressly finding that the need for such construction  
15 and reconstruction work and the vital importance of the highway  
16 system to the welfare and safety of all Nebraskans requires  
17 such action, or (b) to eliminate or alleviate cash-flow problems  
18 resulting from the receipt of federal funds. Such bonds shall in  
19 all respects comply with the provisions of Article XIII, section 1,  
20 of the Constitution of Nebraska.

21           (3) Under the authority granted by Article XIII, section  
22 1, of the Constitution of Nebraska, the Legislature hereby  
23 authorizes after August 1, 2010, the issuance of bonds in one  
24 or more series in an aggregate principal amount to be determined  
25 by the commission, not to exceed two hundred fifty million dollars.

1 The outstanding principal amount of such bonds may exceed such  
2 limit if and to the extent that the commission determines that  
3 the issuance of advance refunding bonds under section 39-2226 in a  
4 principal amount greater than the bonds to be refunded would reduce  
5 the aggregate bond principal and interest requirements payable from  
6 the State Infrastructure Bank Fund. The proceeds of such issues  
7 shall be used exclusively for purposes of the Build Nebraska  
8 Act, the Legislature expressly finding that the need for such  
9 construction and reconstruction work and the vital importance of  
10 the highway system to the welfare and safety of all Nebraskans  
11 requires such action. Such bonds shall in all respects comply with  
12 the provisions of Article XIII, section 1, of the Constitution of  
13 Nebraska.

14           Sec. 18. Section 39-2224, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16           39-2224 (1) The proceeds of the sale of bonds authorized  
17 by subsection (1) of section 39-2223 are hereby appropriated to  
18 the Highway Cash Fund of the Department of Roads, for the biennium  
19 ending June 30, 1977, for expenditure for the construction of  
20 highways.

21           (2) The proceeds of the sale of bonds authorized by  
22 subsection (2) of section 39-2223 are hereby appropriated to the  
23 Highway Cash Fund of the Department of Roads for expenditure for  
24 highway construction, resurfacing, reconstruction, rehabilitation,  
25 and restoration and for the elimination or alleviation of cash-flow



1 problems resulting from the receipt of federal funds.

2 (3) The proceeds of the sale of bonds authorized by  
3 subsection (3) of section 39-2223 are hereby appropriated to the  
4 State Infrastructure Bank Fund for use pursuant to the Build  
5 Nebraska Act.

6 Sec. 19. Original sections 39-2201, 39-2205, 39-2209,  
7 39-2211, 39-2212, 39-2213, 39-2215.01, 39-2216, 39-2223, and  
8 39-2224, Reissue Revised Statutes of Nebraska, are repealed.