

LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1092

Introduced by Dubas, 34; Davis, 43; Johnson, 23; Krist, 10;
Lautenbaugh, 18; Mello, 5; Nordquist, 7; Scheer, 19;
Schilz, 47; Sullivan, 41.

Read first time January 22, 2014

Committee: Revenue

A BILL

1 FOR AN ACT relating to funding for highways; to amend sections
2 39-2205, 39-2209, 39-2211, 39-2213, 39-2222, 39-2223, and
3 39-2224, Reissue Revised Statutes of Nebraska, and
4 sections 39-2215, 39-2216, and 39-2704, Revised Statutes
5 Cumulative Supplement, 2012; to authorize issuance of
6 highway bonds; to change provisions of the Build Nebraska
7 Act; to harmonize provisions; to repeal the original
8 sections; and to declare an emergency.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. The Legislature finds that safe and modern
2 highway infrastructure is of great importance to Nebraska's
3 residents, agricultural economy, business economy, and future
4 economic growth. Furthermore, the Legislature finds that it is in the
5 interest of Nebraska taxpayers to leverage historically low interest
6 rates to offset the challenges that construction inflation and
7 uncertain federal highway funding pose to adequately financing the
8 state's infrastructure needs. It is the intent of the Legislature to
9 conservatively utilize bond financing by issuing bonds, not to exceed
10 four hundred million dollars in principal and thirty million dollars
11 in annual debt service for a period of not more than nineteen years,
12 in order to accelerate completion of the highway construction
13 projects identified and to be identified for funding under the Build
14 Nebraska Act.

15 Sec. 2. Upon the recommendation of the department, the
16 commission acting for and on behalf of the state may issue from time
17 to time bonds under the Nebraska Highway Bond Act in such principal
18 amounts as determined by the commission for the purpose of
19 accelerating completion of the highway construction projects
20 identified and to be identified for funding under the Build Nebraska
21 Act. The principal amounts, interest rates, maturities, redemption
22 provisions, sale prices, and other terms of the bonds so authorized
23 to be issued shall be in accordance with terms or conditions
24 established by the commission. No bonds shall be issued after June
25 30, 2020, except for refunding bonds issued in accordance with the

1 Nebraska Highway Bond Act. The proceeds from the sale of any bonds
2 issued, net of costs of issuance, capitalized interest, and necessary
3 or appropriate reserve funds, shall be deposited in the Highway Cash
4 Fund for use pursuant to the Build Nebraska Act. The commission is
5 hereby granted all powers necessary or convenient to carry out the
6 purposes and exercise the powers granted by the Nebraska Highway Bond
7 Act. Bonds shall be paid off by June 30, 2033.

8 Sec. 3. The bonds issued pursuant to section 2 of this
9 act shall be special obligations of the state payable solely and only
10 from the State Highway Capital Improvement Fund and any other funds
11 specifically pledged by the commission for such purpose, and neither
12 the members of the commission nor any person executing the bonds
13 shall be liable thereon. Such bonds shall not be a general obligation
14 or debt of the state, and they shall contain on the face thereof a
15 statement to such effect. Such bonds are declared to be issued for an
16 essential public and governmental purpose and, together with interest
17 thereon and income therefrom, shall be exempt from state income
18 taxes.

19 Sec. 4. Section 39-2205, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 39-2205 Bonds may be issued under the Nebraska Highway
22 Bond Act only to the extent that the annual aggregate principal and
23 interest requirements, in the calendar year in which such bonds are
24 issued and in each calendar year thereafter until the scheduled
25 maturity of such bonds, on such bonds and on all other bonds

1 theretofore issued and to be outstanding and unpaid upon the issuance
2 of such bonds shall not exceed the amount which is equal to fifty
3 percent of the money deposited in the fund, the State Highway Capital
4 Improvement Fund, or the bond fund, as the case may be, from which
5 such bonds shall be paid during the calendar year preceding the
6 issuance of the bonds proposed to be issued. This section shall not
7 apply to the first issuance of each series of bonds authorized by the
8 Legislature.

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

25 Sec. 5. Section 39-2209, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 39-2209 Any resolution or resolutions of the commission
3 authorizing any bonds or any issue thereof may contain provisions,
4 consistent with the Nebraska Highway Bond Act and not in derogation
5 or limitation of such act, which shall be a part of the contract with
6 the holders thereof, as to:

7 (1) Pledging all or any part of the money in the fund or
8 bond fund, as the case may be, to secure the payment of the bonds,
9 subject to such agreements with the bondholders as may then prevail;

10 (2) The use and disposition of money in the fund, the
11 State Highway Capital Improvement Fund, or the ~~ex~~-bond fund;

12 (3) The setting aside of reserves, sinking funds, or
13 arbitrage rebate funds and the funding, regulation, and disposition
14 thereof;

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

17 (5) Limitations on the issuance of additional bonds and
18 on the retirement of outstanding or other bonds pursuant to the
19 Nebraska Highway Bond Act;

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

24 (7) Vesting in a bank or trust company as paying agent
25 such rights, powers, and duties as the commission may determine,

1 vesting in a trustee appointed by the bondholders pursuant to the
2 Nebraska Highway Bond Act such rights, powers, and duties as the
3 commission may determine, and limiting or abrogating the right of the
4 bondholders to appoint a trustee under such act or limiting the
5 rights, powers, and duties of such trustee;

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

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

11 Sec. 6. Section 39-2211, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 39-2211 In addition to the powers conferred upon the
14 commission to secure the bonds in the Nebraska Highway Bond Act, the
15 commission shall have power in connection with the issuance of bonds
16 to enter into such agreements, consistent with the act and not in
17 derogation or limitation of the act, as it may deem necessary,
18 convenient, or desirable concerning the use or disposition of the
19 money in the fund, the State Highway Capital Improvement Fund, or the
20 ~~er~~-bond fund including the pledging or creation of any security
21 interest in such money and the doing of or refraining from doing any
22 act which the commission would have the right to do to secure the
23 bonds in the absence of such agreements. The commission shall have
24 the power to enter into amendments of any such agreements, consistent
25 with the Nebraska Highway Bond Act and not in derogation or

1 limitation of the act, within the powers granted to the commission by
2 the act and to perform such agreements. The provisions of any such
3 agreements may be made a part of the contract with the holders of the
4 bonds.

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

7 39-2213 The bonds shall be special obligations of the
8 state payable solely and only from the fund, the State Highway
9 Capital Improvement Fund, or the ~~ex~~-bond fund, as the case may be,
10 and neither the members of the commission nor any person executing
11 the bonds shall be liable thereon. Such bonds shall not be a general
12 obligation debt of this state and they shall contain on the face
13 thereof a statement to such effect.

14 Sec. 8. Section 39-2215, Revised Statutes Cumulative
15 Supplement, 2012, is amended to read:

16 39-2215 (1) There is hereby created in the state treasury
17 a special fund to be known as the Highway Trust Fund.

18 (2) All funds credited to the Highway Trust Fund pursuant
19 to sections 66-489.02, 66-499, 66-4,140, 66-4,147, 66-6,108, and
20 66-6,109.02, and related penalties and interest, shall be allocated
21 as provided in such sections.

22 (3) All other motor vehicle fuel taxes, diesel fuel
23 taxes, compressed fuel taxes, and alternative fuel fees related to
24 highway use retained by the state, all motor vehicle registration
25 fees retained by the state other than those fees credited to the

1 State Recreation Road Fund pursuant to subdivision (3) of section
2 60-3,156, and other highway-user taxes imposed by state law and
3 allocated to the Highway Trust Fund, except for the proceeds of the
4 sales and use taxes derived from motor vehicles, trailers, and
5 semitrailers credited to the fund pursuant to section 77-27,132, are
6 hereby irrevocably pledged for the terms of the bonds issued prior to
7 January 1, 1988, to the payment of the principal, interest, and
8 redemption premium, if any, of such bonds as they mature and become
9 due at maturity or prior redemption and for any reserves therefor and
10 shall, as received by the State Treasurer, be deposited in the fund
11 for such purpose.

12 (4) Of the money in the fund specified in subsection (3)
13 of this section which is not required for the use specified in such
14 subsection, (a) an amount to be determined annually by the
15 Legislature through the appropriations process may be transferred to
16 the Motor Fuel Tax Enforcement and Collection Cash Fund for use as
17 provided in section 66-738 on a monthly or other less frequent basis
18 as determined by the appropriation language, (b) an amount to be
19 determined annually by the Legislature through the appropriations
20 process shall be transferred to the License Plate Cash Fund as
21 certified by the Director of Motor Vehicles, and (c) the remaining
22 money may be used for the purchase for retirement of the bonds issued
23 prior to January 1, 1988, in the open market.

24 (5) The State Treasurer shall monthly transfer, from the
25 proceeds of the sales and use taxes credited to the Highway Trust

1 Fund and any money remaining in the fund after the requirements of
2 subsections (2) through (4) of this section are satisfied, thirty
3 thousand dollars to the Grade Crossing Protection Fund.

4 (6) Except as provided in subsection (7) of this section,
5 the balance of the Highway Trust Fund shall be allocated fifty-three
6 and one-third percent, less the amount provided for in section
7 39-847.01, to the Department of Roads, twenty-three and one-third
8 percent, less the amount provided for in section 39-847.01, to the
9 various counties for road purposes, and twenty-three and one-third
10 percent to the various municipalities for street purposes. If bonds
11 are issued pursuant to subsection (2) of section 39-2223, the portion
12 allocated to the Department of Roads shall be credited monthly to the
13 Highway Restoration and Improvement Bond Fund, and if no bonds are
14 issued pursuant to such subsection, the portion allocated to the
15 department shall be credited monthly to the Highway Cash Fund. The
16 portions allocated to the counties and municipalities shall be
17 credited monthly to the Highway Allocation Fund and distributed
18 monthly as provided by law. Vehicles accorded prorated registration
19 pursuant to section 60-3,198 shall not be included in any formula
20 involving motor vehicle registrations used to determine the
21 allocation and distribution of state funds for highway purposes to
22 political subdivisions.

23 (7) If it is determined by December 20 of any year that a
24 county will receive from its allocation of state-collected highway
25 revenue and from any funds relinquished to it by municipalities

1 within its boundaries an amount in such year which is less than such
2 county received in state-collected highway revenue in calendar year
3 1969, based upon the 1976 tax rates for highway-user fuels and
4 registration fees, the Department of Roads shall notify the State
5 Treasurer that an amount equal to the sum necessary to provide such
6 county with funds equal to such county's 1969 highway allocation for
7 such year shall be transferred to such county from the Highway Trust
8 Fund. Such makeup funds shall be matched by the county as provided in
9 sections 39-2501 to 39-2510. The balance remaining in the fund after
10 such transfer shall then be reallocated as provided in subsection (6)
11 of this section.

12 (8) The State Treasurer shall disburse the money in the
13 Highway Trust Fund as directed by resolution of the commission. All
14 disbursements from the fund shall be made upon warrants drawn by the
15 Director of Administrative Services. Any money in the fund available
16 for investment shall be invested by the state investment officer
17 pursuant to the Nebraska Capital Expansion Act and the Nebraska State
18 Funds Investment Act and the earnings, if any, credited to the fund.

19 (9) If bonds are issued pursuant to subsection (3) of
20 section 39-2223, all motor vehicle fuel taxes, diesel fuel taxes,
21 compressed fuel taxes, and alternative fuel fees related to highway
22 use, motor vehicle registration fees, and other highway-user taxes
23 which are collected by the state in the Highway Trust Fund shall be
24 hereby irrevocably pledged for the terms of the bonds issued after
25 July 1, 2014, to the payment of the principal, interest, and

1 redemption premium, if any, of such bonds as they mature and become
2 due at maturity or prior redemption and for any reserves for such
3 bonds.

4 Sec. 9. Section 39-2216, Revised Statutes Cumulative
5 Supplement, 2012, is amended to read:

6 39-2216 The Legislature hereby irrevocably pledges and
7 agrees with the holders of the bonds issued under the Nebraska
8 Highway Bond Act that so long as such bonds remain outstanding and
9 unpaid it shall not repeal, diminish, or apply to any other purposes
10 the motor vehicle fuel taxes, diesel fuel taxes, compressed fuel
11 taxes, and alternative fuel fees related to highway use, motor
12 vehicle registration fees, sales and use taxes, and such other
13 highway-user taxes which may be imposed by state law and allocated to
14 the fund, ~~or~~ bond fund, or the State Highway Capital Improvement
15 Fund, as the case may be, if to do so would result in fifty percent
16 of the amount deposited in the fund, ~~or~~ bond fund, or the State
17 Highway Capital Improvement Fund in each year being less than the
18 amount equal to the maximum annual principal and interest
19 requirements of such bonds.

20 Sec. 10. Section 39-2222, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 39-2222 Sections 39-2201 to 39-2226 and sections 1 to 3
23 of this act shall be known and may be cited as the Nebraska Highway
24 Bond Act.

25 Sec. 11. Section 39-2223, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 39-2223 (1) Under the authority granted by Article XIII,
3 section 1, of the Constitution of Nebraska, the Legislature hereby
4 authorizes the issuance of bonds in the principal amount of twenty
5 million dollars in 1969 and in the principal amount of twenty million
6 dollars on or before June 30, 1977, with the proceeds thereof to be
7 used for the construction of highways in this state, the Legislature
8 expressly finding that the need for such construction requires such
9 action. Such bonds shall in all respects comply with the provisions
10 of Article XIII, section 1, of the Constitution of Nebraska.

11 (2) Under the authority granted by Article XIII, section
12 1, of the Constitution of Nebraska, the Legislature hereby authorizes
13 after July 1, 1988, the issuance of bonds in a principal amount to be
14 determined by the commission, not to exceed fifty million dollars.
15 The outstanding principal amount of such bonds may exceed such limit
16 if and to the extent that the commission determines that the issuance
17 of advance refunding bonds under section 39-2226 in a principal
18 amount greater than the bonds to be refunded would reduce the
19 aggregate bond principal and interest requirements payable from the
20 bond fund. The proceeds of such issues shall be used exclusively (a)
21 for the construction, resurfacing, reconstruction, rehabilitation,
22 and restoration of highways in this state, the Legislature expressly
23 finding that the need for such construction and reconstruction work
24 and the vital importance of the highway system to the welfare and
25 safety of all Nebraskans requires such action, or (b) to eliminate or

1 alleviate cash-flow problems resulting from the receipt of federal
2 funds. Such bonds shall in all respects comply with the provisions of
3 Article XIII, section 1, of the Constitution of Nebraska.

4 (3) Under the authority granted by Article XIII, section
5 1, of the Constitution of Nebraska, the Legislature hereby authorizes
6 after July 1, 2014, in addition to the authority granted in
7 subsections (1) and (2) of this section, the issuance of bonds in one
8 or more series in an aggregate principal amount to be determined by
9 the commission, not to exceed four hundred million dollars. The
10 outstanding principal amount of such bonds may exceed such limit if
11 and to the extent that the commission determines that the issuance of
12 advance refunding bonds under section 39-2226 in a principal amount
13 greater than the bonds to be refunded would reduce the aggregate bond
14 principal and interest requirements payable from the State Highway
15 Capital Improvement Fund. The proceeds of such issues shall be used
16 exclusively for purposes of the Build Nebraska Act, the Legislature
17 expressly finding that the need for such construction and
18 reconstruction work and the vital importance of the highway system to
19 the welfare and safety of all Nebraskans requires such action. Such
20 bonds shall in all respects comply with the provisions of Article
21 XIII, section 1, of the Constitution of Nebraska.

22 Sec. 12. Section 39-2224, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 39-2224 (1) The proceeds of the sale of bonds authorized
25 by subsection (1) of section 39-2223 are hereby appropriated to the

1 Highway Cash Fund of the Department of Roads, for the biennium ending
2 June 30, 1977, for expenditure for the construction of highways.

3 (2) The proceeds of the sale of bonds authorized by
4 subsection (2) of section 39-2223 are hereby appropriated to the
5 Highway Cash Fund of the Department of Roads for expenditure for
6 highway construction, resurfacing, reconstruction, rehabilitation,
7 and restoration and for the elimination or alleviation of cash-flow
8 problems resulting from the receipt of federal funds.

9 (3) The proceeds of the sale of bonds authorized by
10 subsection (3) of section 39-2223 are hereby appropriated to the
11 Highway Cash Fund for use pursuant to the Build Nebraska Act.

12 Sec. 13. Section 39-2704, Revised Statutes Cumulative
13 Supplement, 2012, is amended to read:

14 39-2704 The fund shall be used as follows:

15 (1) For repayment of bonds issued pursuant to subsection
16 (3) of section 29-2223. At least twenty-five percent of the proceeds
17 from such bonds shall be used, as determined by the department, for
18 construction of the expressway system and federally designated high
19 priority corridors. The remaining proceeds shall be used to pay for
20 surface transportation projects of the highest priority as determined
21 by the department;

22 ~~(1)---(2)~~ At least twenty-five percent of the money
23 credited to the fund pursuant to section 77-27,132, or if bonds are
24 issued pursuant to subsection (3) of section 29-2223, of money
25 remaining in the fund after repayment of such bonds, each fiscal year

1 shall be used, as determined by the department, for construction of
2 the expressway system and federally designated high priority
3 corridors; and

4 ~~(2)-(3)~~ The remaining money credited to the fund pursuant
5 to section 77-27,132 and remaining after payment of bonds issued, if
6 any, pursuant to subsection (3) of section 29-2223 each fiscal year
7 shall be used to pay for surface transportation projects of the
8 highest priority as determined by the department.

9 Sec. 14. Original sections 39-2205, 39-2209, 39-2211,
10 39-2213, 39-2222, 39-2223, and 39-2224, Reissue Revised Statutes of
11 Nebraska, and sections 39-2215, 39-2216, and 39-2704, Revised
12 Statutes Cumulative Supplement, 2012, are repealed.

13 Sec. 15. Since an emergency exists, this act takes effect
14 when passed and approved according to law.