

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 97

Introduced by Wayne, 13.

Read first time January 10, 2019

Committee: Transportation and Telecommunications

1 A BILL FOR AN ACT relating to funding for highways; to amend sections
2 39-2203, 39-2205, 39-2209, 39-2211, 39-2212, 39-2213, 39-2216,
3 39-2222, 39-2223, 39-2704, and 66-4,100, Reissue Revised Statutes of
4 Nebraska, and section 39-2224, Revised Statutes Cumulative
5 Supplement, 2018; to authorize issuance of highway bonds; to create
6 a fund; to change provisions of the Nebraska Highway Bond Act and
7 the Build Nebraska Act; to pledge revenue for the bonds; to
8 harmonize provisions; to repeal the original sections; and to
9 declare an emergency.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. The Legislature finds that safe and modern highway
2 infrastructure is of great importance to Nebraska's residents,
3 agricultural economy, business economy, and future economic growth.
4 Furthermore, the Legislature finds that it is in the interest of Nebraska
5 taxpayers to leverage historically low interest rates to offset the
6 challenges that construction inflation and uncertain federal highway
7 funding pose to adequately financing the state's infrastructure needs. It
8 is the intent of the Legislature to conservatively utilize bond financing
9 by issuing bonds, not to exceed two hundred million dollars in the
10 aggregate principal amount with a maturity on or before July 1, 2039.

11 Sec. 2. Upon the recommendation of the Department of
12 Transportation, the commission acting for and on behalf of the state may
13 issue from time to time bonds under the Nebraska Highway Bond Act in such
14 principal amounts as determined by the commission for the purpose of
15 accelerating completion of the highway construction projects identified
16 and to be identified for funding under the Build Nebraska Act. The
17 principal amounts, fixed interest rates, maturities, redemption
18 provisions, sale prices, and other terms of the bonds so authorized to be
19 issued shall be in accordance with terms or conditions established by the
20 commission. No bonds shall be issued with a fixed interest rate exceeding
21 five percent or with a variable interest rate. No bonds shall be issued
22 after June 30, 2022, except for refunding bonds issued in accordance with
23 the Nebraska Highway Bond Act. The Highway Cash Fund may be pledged for
24 repayment of such bonds. The proceeds from the sale of any bonds issued,
25 net of costs of issuance, capitalized interest, and necessary or
26 appropriate reserve funds, shall be deposited in the Build Nebraska Bond
27 Fund for use as provided under the Build Nebraska Act. The commission is
28 hereby granted all powers necessary or convenient to carry out the
29 purposes and exercise the powers granted by the Nebraska Highway Bond
30 Act. Bonds issued pursuant to this section shall be paid off by July 1,
31 2039.

1 Sec. 3. The bonds issued pursuant to section 2 of this act shall be
2 special obligations of the state payable from any lawfully available
3 funds of the state and any other funds specifically pledged by the
4 commission for such purpose, and neither the members of the commission
5 nor any person executing the bonds shall be liable thereon. Such bonds
6 shall not be a general obligation debt of the state, and they shall
7 contain on the face thereof a statement to such effect. Such bonds are
8 declared to be issued for an essential public and governmental purpose
9 and, together with interest thereon and income therefrom, shall be exempt
10 from state income taxes.

11 Sec. 4. (1) The Build Nebraska Bond Fund is created. The fund shall
12 consist of money credited to the fund pursuant to section 2 of this act
13 and any other money as determined by the Legislature.

14 (2) The fund shall be used as follows:

15 (a) At least twenty-five percent of the proceeds of the bonds shall
16 be used, as determined by the Department of Transportation, for
17 construction of the expressway system and federally designated high
18 priority corridors; and

19 (b) The remaining proceeds shall be used to pay for surface
20 transportation projects of the highest priority as determined by the
21 department.

22 (3) Any money in the fund available for investment shall be invested
23 by the state investment officer pursuant to the Nebraska Capital
24 Expansion Act and the Nebraska State Funds Investment Act. Investment
25 earnings from investment of money in the fund shall be credited to the
26 fund.

27 Sec. 5. Section 39-2203, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 39-2203 The commission acting for and on behalf of the state may
30 issue from time to time bonds in such principal amounts as shall be
31 necessary to provide sufficient funds to defray any or all of the cost of

1 construction of highways. The principal amount of the bonds so authorized
2 to be issued shall not exceed, in the aggregate, the total amount
3 authorized by the Legislature from time to time for such purpose. The
4 proceeds from the sale of any bonds issued under the Nebraska Highway
5 Bond Act shall be deposited in the state treasury to the credit of the
6 Highway Cash Fund or the Build Nebraska Bond Fund and shall be used only
7 to finance or to refinance through the issuance of refunding bonds the
8 construction of highways in this state as authorized by law. The
9 commission is hereby granted all powers necessary or convenient to carry
10 out the purposes and exercise the powers granted by such act.

11 Sec. 6. Section 39-2205, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 39-2205 Bonds may be issued under the Nebraska Highway Bond Act only
14 to the extent that the annual aggregate principal and interest
15 requirements, in the calendar year in which such bonds are issued and in
16 each calendar year thereafter until the scheduled maturity of such bonds,
17 on such bonds and on all other bonds theretofore issued and to be
18 outstanding and unpaid upon the issuance of such bonds shall not exceed
19 the amount which is equal to fifty percent of the money deposited in the
20 fund, the Highway Cash Fund, or the bond fund, as the case may be, from
21 which such bonds shall be secured or paid during the calendar year
22 preceding the issuance of the bonds proposed to be issued. This section
23 shall not apply to the first issuance of each series of bonds authorized
24 by the Legislature.

25 If short-term bonds are issued in anticipation of the issuance of
26 long-term refunding bonds and such short-term bonds are secured by
27 insurance or a letter of credit or similar guarantee issued by a
28 financial institution rated by a national rating agency in one of the two
29 highest categories of bond ratings, then, for the purposes of the
30 Nebraska Highway Bond Act, when determining the amount of short-term
31 bonds that may be issued and the amount of taxes, fees, or other money to

1 be deposited in any fund for the payment of bonds issued under the act,
2 the annual aggregate principal and interest payments on the short-term
3 bonds shall be deemed to be such payments thereon, except that the final
4 principal payment shall not be that specified in the short-term bonds but
5 shall be the principal and all interest payments required to reimburse
6 the issuer of the insurance policy or letter of credit or similar
7 guarantee pursuant to the reimbursement agreement between the commission
8 and such issuer.

9 Sec. 7. Section 39-2209, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 39-2209 Any resolution or resolutions of the commission authorizing
12 any bonds or any issue thereof may contain provisions, consistent with
13 the Nebraska Highway Bond Act and not in derogation or limitation of such
14 act, which shall be a part of the contract with the holders thereof, as
15 to:

16 (1) Pledging all or any part of the money in the fund, the Highway
17 Cash Fund, or the bond fund, as the case may be, to secure the payment of
18 the bonds, subject to such agreements with the bondholders as may then
19 prevail;

20 (2) The use and disposition of money in the fund, the Build Nebraska
21 Bond Fund, the Highway Cash Fund, the State Highway Capital Improvement
22 Fund, or the bond fund;

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

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

27 (5) Limitations on the issuance of additional bonds and on the
28 retirement of outstanding or other bonds pursuant to the Nebraska Highway
29 Bond Act;

30 (6) The procedure by which the terms of any agreement with
31 bondholders may be amended or abrogated, the amount of bonds the holders

1 of which must consent thereto, and the manner in which such consent may
2 be given;

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

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

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

15 Sec. 8. Section 39-2211, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 39-2211 In addition to the powers conferred upon the commission to
18 secure the bonds in the Nebraska Highway Bond Act, the commission shall
19 have power in connection with the issuance of bonds to enter into such
20 agreements, consistent with the act and not in derogation or limitation
21 of the act, as it may deem necessary, convenient, or desirable concerning
22 the use or disposition of the money in the fund, the Build Nebraska Bond
23 Fund, the Highway Cash Fund, the State Highway Capital Improvement Fund,
24 or the bond fund including the pledging or creation of any security
25 interest in such money and the doing of or refraining from doing any act
26 which the commission would have the right to do to secure the bonds in
27 the absence of such agreements. The commission shall have the power to
28 enter into amendments of any such agreements, consistent with the
29 Nebraska Highway Bond Act and not in derogation or limitation of the act,
30 within the powers granted to the commission by the act and to perform
31 such agreements. The provisions of any such agreements may be made a part

1 of the contract with the holders of the bonds.

2 Sec. 9. Section 39-2212, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 39-2212 Any pledge or security instrument made by the commission
5 shall be valid and binding from the time when the pledge or security
6 instrument is made. The money in the fund, Highway Cash Fund, or the bond
7 fund so pledged and entrusted shall immediately be subject to the lien of
8 such pledge or security instrument upon the deposit thereof in the fund
9 without any physical delivery thereof or further act. The lien of any
10 such pledge or security instrument shall be valid and binding as against
11 all parties having subsequently arising claims of any kind in tort,
12 contract, or otherwise, irrespective of whether such parties have notice
13 thereof. Neither the resolution nor any security instrument or other
14 instrument by which a pledge or other security is created need be
15 recorded or filed and the commission shall not be required to comply with
16 any of the provisions of the Uniform Commercial Code.

17 Sec. 10. Section 39-2213, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 39-2213 The bonds shall be special obligations of the state payable
20 solely and only from the fund, the Highway Cash Fund, the State Highway
21 Capital Improvement Fund, or the bond fund, as the case may be, and
22 neither the members of the commission nor any person executing the bonds
23 shall be liable thereon. Such bonds shall not be a general obligation
24 debt of this state and they shall contain on the face thereof a statement
25 to such effect.

26 Sec. 11. Section 39-2216, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 39-2216 The Legislature hereby irrevocably pledges and agrees with
29 the holders of the bonds issued under the Nebraska Highway Bond Act that
30 so long as such bonds remain outstanding and unpaid it shall not repeal,
31 diminish, or apply to any other purposes the motor vehicle fuel taxes,

1 diesel fuel taxes, compressed fuel taxes, and alternative fuel fees
2 related to highway use, motor vehicle registration fees, and such other
3 highway-user taxes which may be imposed by state law and allocated to the
4 fund, the Highway Cash Fund, or the bond fund, as the case may be, if to
5 do so would result in fifty percent of the amount deposited in the fund,
6 the Highway Cash Fund, or the bond fund in each year being less than the
7 amount equal to the maximum annual principal and interest requirements of
8 such bonds.

9 Sec. 12. Section 39-2222, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 39-2222 Sections 39-2201 to 39-2226 and sections 1 to 4 of this act
12 shall be known and may be cited as the Nebraska Highway Bond Act.

13 Sec. 13. Section 39-2223, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 39-2223 (1) Under the authority granted by Article XIII, section 1,
16 of the Constitution of Nebraska, the Legislature hereby authorizes the
17 issuance of bonds in the principal amount of twenty million dollars in
18 1969 and in the principal amount of twenty million dollars on or before
19 June 30, 1977, with the proceeds thereof to be used for the construction
20 of highways in this state, the Legislature expressly finding that the
21 need for such construction requires such action. Such bonds shall in all
22 respects comply with the provisions of Article XIII, section 1, of the
23 Constitution of Nebraska.

24 (2) Under the authority granted by Article XIII, section 1, of the
25 Constitution of Nebraska, the Legislature hereby authorizes after July 1,
26 1988, the issuance of bonds in a principal amount to be determined by the
27 commission, not to exceed fifty million dollars. The outstanding
28 principal amount of such bonds may exceed such limit if and to the extent
29 that the commission determines that the issuance of advance refunding
30 bonds under section 39-2226 in a principal amount greater than the bonds
31 to be refunded would reduce the aggregate bond principal and interest

1 requirements payable from the bond fund. The proceeds of such issues
2 shall be used exclusively (a) for the construction, resurfacing,
3 reconstruction, rehabilitation, and restoration of highways in this
4 state, the Legislature expressly finding that the need for such
5 construction and reconstruction work and the vital importance of the
6 highway system to the welfare and safety of all Nebraskans requires such
7 action, or (b) to eliminate or alleviate cash-flow problems resulting
8 from the receipt of federal funds. Such bonds shall in all respects
9 comply with the provisions of Article XIII, section 1, of the
10 Constitution of Nebraska.

11 (3) Under the authority granted by Article XIII, section 1, of the
12 Constitution of Nebraska, the Legislature hereby authorizes after July 1,
13 2018, in addition to the authority granted in subsections (1) and (2) of
14 this section, the issuance of bonds in one or more series in an aggregate
15 principal amount to be determined by the commission, not to exceed two
16 hundred million dollars. The outstanding aggregate principal amount of
17 such bonds may exceed such limit if and to the extent that the commission
18 determines that the issuance of advance refunding bonds under section
19 39-2226 in a principal amount greater than the bonds to be refunded would
20 reduce the aggregate bond principal and interest requirements. No advance
21 refunding bonds shall be issued with a fixed interest rate exceeding five
22 percent or with a variable interest rate. The proceeds of such issues
23 shall be used exclusively for purposes of the Build Nebraska Act, the
24 Legislature expressly finding that the need for such construction and
25 reconstruction work and the vital importance of the highway system to the
26 welfare and safety of all Nebraskans requires such action. Such bonds
27 shall in all respects comply with the provisions of Article XIII, section
28 1, of the Constitution of Nebraska.

29 Sec. 14. Section 39-2224, Revised Statutes Cumulative Supplement,
30 2018, is amended to read:

31 39-2224 (1) The proceeds of the sale of bonds authorized by

1 subsection (1) of section 39-2223 are hereby appropriated to the Highway
2 Cash Fund of the Department of Transportation, for the biennium ending
3 June 30, 1977, for expenditure for the construction of highways.

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

10 (3) The proceeds of the sale of bonds authorized by subsection (3)
11 of section 39-2223 shall be deposited in the Build Nebraska Bond Fund for
12 use as provided under the Build Nebraska Act.

13 Sec. 15. Section 39-2704, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 39-2704 The fund shall be used as follows:

16 (1) If directed by the State Highway Commission, money in the fund
17 shall be used for repayment of bonds issued pursuant to subsection (3) of
18 section 39-2223;

19 (2) ~~(1)~~ At least twenty-five percent of the money credited to the
20 fund pursuant to section 77-27,132 each fiscal year shall be used, as
21 determined by the department, for construction of the expressway system
22 and federally designated high priority corridors; and

23 (3) ~~(2)~~ The remaining money in the fund credited to the fund
24 pursuant to section 77-27,132 each fiscal year shall be used to pay for
25 surface transportation projects of the highest priority as determined by
26 the department.

27 Sec. 16. Section 66-4,100, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 66-4,100 The Highway Cash Fund and the Roads Operations Cash Fund
30 are hereby created. If bonds are issued pursuant to subsection (2) of
31 section 39-2223, the balance of the share of the Highway Trust Fund

1 allocated to the Department of Transportation and deposited into the
2 Highway Restoration and Improvement Bond Fund as provided in subsection
3 (6) of section 39-2215 and the balance of the money deposited in the
4 Highway Restoration and Improvement Bond Fund as provided in section
5 39-2215.01 shall be transferred by the State Treasurer, on or before the
6 last day of each month, to the Highway Cash Fund. If no bonds are issued
7 pursuant to subsection (2) of section 39-2223, the share of the Highway
8 Trust Fund allocated to the Department of Transportation shall be
9 transferred by the State Treasurer on or before the last day of each
10 month to the Highway Cash Fund.

11 If bonds are issued pursuant to subsection (3) of section 39-2223,
12 all motor vehicle fuel taxes, diesel fuel taxes, compressed fuel taxes,
13 and alternative fuel fees related to highway use, motor vehicle
14 registration fees, and other highway-user taxes in the Highway Cash Fund
15 shall be and are hereby irrevocably pledged for any bonds issued after
16 July 1, 2019, to the payment of the principal, interest, and redemption
17 premium, if any, of such bonds as they mature and become due at maturity
18 or prior redemption and for any reserves for such bonds, in addition to
19 annual principal and interest paid from the State Highway Capital
20 Improvement Fund.

21 The Legislature may direct the State Treasurer to transfer funds
22 from the Highway Cash Fund to the Roads Operations Cash Fund. Both funds
23 shall be expended by the department (1) for acquiring real estate, road
24 materials, equipment, and supplies to be used in the construction,
25 reconstruction, improvement, and maintenance of state highways, (2) for
26 the construction, reconstruction, improvement, and maintenance of state
27 highways, including grading, drainage, structures, surfacing, roadside
28 development, landscaping, and other incidentals necessary for proper
29 completion and protection of state highways as the department shall,
30 after investigation, find and determine shall be for the best interests
31 of the highway system of the state, either independent of or in

1 conjunction with federal-aid money for highway purposes, (3) for the
2 share of the department of the cost of maintenance of state aid bridges,
3 (4) for planning studies in conjunction with federal highway funds for
4 the purpose of analyzing traffic problems and financial conditions and
5 problems relating to state, county, township, municipal, federal, and all
6 other roads in the state and for incidental costs in connection with the
7 federal-aid grade crossing program for roads not on state highways, (5)
8 for tests and research by the department or proportionate costs of
9 membership, tests, and research of highway organizations when
10 participated in by the highway departments of other states, (6) for the
11 payment of expenses and costs of the Board of Examiners for County
12 Highway and City Street Superintendents as set forth in section 39-2310,
13 (7) for support of the public transportation assistance program
14 established under section 13-1209 and the intercity bus system assistance
15 program established under section 13-1213, and (8) for purchasing from
16 political or governmental subdivisions or public corporations, pursuant
17 to section 39-1307, any federal-aid transportation funds available to
18 such entities.

19 Any money in the Highway Cash Fund and the Roads Operations Cash
20 Fund not needed for current operations of the department shall, as
21 directed by the Director-State Engineer to the State Treasurer, be
22 invested by the state investment officer pursuant to the Nebraska Capital
23 Expansion Act and the Nebraska State Funds Investment Act, subject to
24 approval by the board of each investment. All income received as a result
25 of such investment shall be placed in the Highway Cash Fund.

26 Transfers may be made from the Roads Operations Cash Fund to the
27 General Fund at the direction of the Legislature through June 30, 2019.
28 The State Treasurer shall transfer seven million five hundred thousand
29 dollars from the Roads Operations Cash Fund to the General Fund on or
30 before June 30, 2018, on such date as directed by the budget
31 administrator of the budget division of the Department of Administrative

1 Services. The State Treasurer shall transfer seven million five hundred
2 thousand dollars from the Roads Operations Cash Fund to the General Fund
3 on or after July 1, 2018, but on or before June 30, 2019, on such date as
4 directed by the budget administrator of the budget division of the
5 Department of Administrative Services.

6 Sec. 17. Original sections 39-2203, 39-2205, 39-2209, 39-2211,
7 39-2212, 39-2213, 39-2216, 39-2222, 39-2223, 39-2704, and 66-4,100,
8 Reissue Revised Statutes of Nebraska, and section 39-2224, Revised
9 Statutes Cumulative Supplement, 2018, are repealed.

10 Sec. 18. Since an emergency exists, this act takes effect when
11 passed and approved according to law.