

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:

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.