

LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 1092**

Final Reading

Introduced by Dubas, 34; Davis, 43; Johnson, 23; Krist, 10;  
Lautenbaugh, 18; Mello, 5; Nordquist, 7; Scheer, 19;  
Schilz, 47; Sullivan, 41; Campbell, 25; Gloor, 35.

Read first time January 22, 2014

Committee: Revenue

A BILL

1 FOR AN ACT relating to funding for highways; to amend sections  
2 39-2203, 39-2205, 39-2209, 39-2211, 39-2212, 39-2213,  
3 39-2222, 39-2223, and 39-2224, Reissue Revised Statutes  
4 of Nebraska, and sections 39-2216, 39-2704, and 66-4,100,  
5 Revised Statutes Cumulative Supplement, 2012; to  
6 authorize issuance of highway bonds; to create a fund; to  
7 change provisions of the Nebraska Highway Bond Act and  
8 the Build Nebraska Act; to pledge revenue for the bonds;  
9 to harmonize provisions; to repeal the original sections;  
10 and to declare an emergency.

11 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 two hundred million dollars in the aggregate principal amount with a  
11 maturity on or before July 1, 2033.

12           Sec. 2. Upon the recommendation of the Department of  
13 Roads, the commission acting for and on behalf of the state may issue  
14 from time to time bonds under the Nebraska Highway Bond Act in such  
15 principal amounts as determined by the commission for the purpose of  
16 accelerating completion of the highway construction projects  
17 identified and to be identified for funding under the Build Nebraska  
18 Act. The principal amounts, fixed interest rates, maturities,  
19 redemption provisions, sale prices, and other terms of the bonds so  
20 authorized to be issued shall be in accordance with terms or  
21 conditions established by the commission. No bonds shall be issued  
22 with a fixed interest rate exceeding five percent or with a variable  
23 interest rate. No bonds shall be issued after June 30, 2017, except  
24 for refunding bonds issued in accordance with the Nebraska Highway  
25 Bond Act. The Highway Cash Fund may be pledged for repayment of such

1 bonds. The proceeds from the sale of any bonds issued, net of costs  
2 of issuance, capitalized interest, and necessary or appropriate  
3 reserve funds, shall be deposited in the Build Nebraska Bond Fund for  
4 use as provided under 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 July 1, 2033.

8           Sec. 3. The bonds issued pursuant to section 2 of this  
9 act shall be special obligations of the state payable from any  
10 lawfully available funds of the state 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 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. (1) The Build Nebraska Bond Fund is created. The  
20 fund shall consist of money credited to the fund pursuant to section  
21 2 of this act and any other money as determined by the Legislature.

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

23           (a) At least twenty-five percent of the proceeds of the  
24 bonds shall be used, as determined by the Department of Roads, for  
25 construction of the expressway system and federally designated high

1 priority corridors; and

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

5 (3) Any money in the fund available for investment shall  
6 be invested by the state investment officer pursuant to the Nebraska  
7 Capital Expansion Act and the Nebraska State Funds Investment Act.  
8 Investment earnings from investment of money in the fund shall be  
9 credited to the fund.

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

12 39-2203 The commission acting for and on behalf of the  
13 state may issue from time to time bonds in such principal amounts as  
14 shall be necessary to provide sufficient funds to defray any or all  
15 of the cost of construction of highways. The principal amount of the  
16 bonds so authorized to be issued shall not exceed, in the aggregate,  
17 the total amount authorized by the Legislature from time to time for  
18 such purpose. The proceeds from the sale of any bonds issued under  
19 the Nebraska Highway Bond Act shall be deposited in the state  
20 treasury to the credit of the Highway Cash Fund or the Build Nebraska  
21 Bond Fund and shall be used only to finance or to refinance through  
22 the issuance of refunding bonds the construction of highways in this  
23 state as authorized by law. The commission is hereby granted all  
24 powers necessary or convenient to carry out the purposes and exercise  
25 the powers granted by such act.

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

3           39-2205 Bonds may be issued under the Nebraska Highway  
4 Bond Act only to the extent that the annual aggregate principal and  
5 interest requirements, in the calendar year in which such bonds are  
6 issued and in each calendar year thereafter until the scheduled  
7 maturity of such bonds, on such bonds and on all other bonds  
8 theretofore issued and to be outstanding and unpaid upon the issuance  
9 of such bonds shall not exceed the amount which is equal to fifty  
10 percent of the money deposited in the fund, the Highway Cash Fund, or  
11 the bond fund, as the case may be, from which such bonds shall be  
12 secured or paid during the calendar year preceding the issuance of  
13 the bonds proposed to be issued. This section shall not apply to the  
14 first issuance of each series of bonds authorized by the Legislature.

15           If short-term bonds are issued in anticipation of the  
16 issuance of long-term refunding bonds and such short-term bonds are  
17 secured by insurance or a letter of credit or similar guarantee  
18 issued by a financial institution rated by a national rating agency  
19 in one of the two highest categories of bond ratings, then, for the  
20 purposes of the Nebraska Highway Bond Act, when determining the  
21 amount of short-term bonds that may be issued and the amount of  
22 taxes, fees, or other money to be deposited in any fund for the  
23 payment of bonds issued under the act, the annual aggregate principal  
24 and interest payments on the short-term bonds shall be deemed to be  
25 such payments thereon, except that the final principal payment shall

1 not be that specified in the short-term bonds but shall be the  
2 principal and all interest payments required to reimburse the issuer  
3 of the insurance policy or letter of credit or similar guarantee  
4 pursuant to the reimbursement agreement between the commission and  
5 such issuer.

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

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

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

17 (2) The use and disposition of money in the fund, the  
18 Build Nebraska Bond Fund, the Highway Cash Fund, the State Highway  
19 Capital Improvement Fund, or the ~~or~~ bond fund;

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

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

25 (5) Limitations on the issuance of additional bonds and

1 on the retirement of outstanding or other bonds pursuant to the  
2 Nebraska Highway Bond Act;

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

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

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

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

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

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

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

13           Sec. 9. 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, Highway Cash  
18 Fund, or bond fund so pledged and entrusted shall immediately be  
19 subject to the lien of such pledge or security instrument upon the  
20 deposit thereof in the fund without any physical delivery thereof or  
21 further act. The lien of any such pledge or security instrument shall  
22 be valid and binding as against all parties having subsequently  
23 arising claims of any kind in tort, contract, or otherwise,  
24 irrespective of whether such parties have notice thereof. Neither the  
25 resolution nor any security instrument or other instrument by which a

1   pledge or other security is created need be recorded or filed and the  
2   commission shall not be required to comply with any of the provisions  
3   of the Uniform Commercial Code.

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

6           39-2213 The bonds shall be special obligations of the  
7   state payable solely and only from the fund, the Highway Cash Fund,  
8   the State Highway Capital Improvement Fund, or the ~~ex~~-bond fund, as  
9   the case may be, and neither the members of the commission nor any  
10   person executing the bonds shall be liable thereon. Such bonds shall  
11   not be a general obligation debt of this state and they shall contain  
12   on the face thereof a statement to such effect.

13           Sec. 11. Section 39-2216, Revised Statutes Cumulative  
14   Supplement, 2012, is amended to read:

15           39-2216 The Legislature hereby irrevocably pledges and  
16   agrees with the holders of the bonds issued under the Nebraska  
17   Highway Bond Act that so long as such bonds remain outstanding and  
18   unpaid it shall not repeal, diminish, or apply to any other purposes  
19   the motor vehicle fuel taxes, diesel fuel taxes, compressed fuel  
20   taxes, and alternative fuel fees related to highway use, motor  
21   vehicle registration fees, and such other highway-user taxes which  
22   may be imposed by state law and allocated to the fund, the Highway  
23   Cash Fund, or the bond fund, as the case may be, if to do so would  
24   result in fifty percent of the amount deposited in the fund, the  
25   Highway Cash Fund, or the bond fund in each year being less than the

1 amount equal to the maximum annual principal and interest  
2 requirements of such bonds.

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

5                   39-2222 Sections 39-2201 to 39-2226 and sections 1 to 4  
6 of this act shall be known and may be cited as the Nebraska Highway  
7 Bond Act.

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

10                   39-2223 (1) Under the authority granted by Article XIII,  
11 section 1, of the Constitution of Nebraska, the Legislature hereby  
12 authorizes the issuance of bonds in the principal amount of twenty  
13 million dollars in 1969 and in the principal amount of twenty million  
14 dollars on or before June 30, 1977, with the proceeds thereof to be  
15 used for the construction of highways in this state, the Legislature  
16 expressly finding that the need for such construction requires such  
17 action. Such bonds shall in all respects comply with the provisions  
18 of Article XIII, section 1, of the Constitution of Nebraska.

19                   (2) Under the authority granted by Article XIII, section  
20 1, of the Constitution of Nebraska, the Legislature hereby authorizes  
21 after July 1, 1988, the issuance of bonds in a principal amount to be  
22 determined by the commission, not to exceed fifty million dollars.  
23 The outstanding principal amount of such bonds may exceed such limit  
24 if and to the extent that the commission determines that the issuance  
25 of advance refunding bonds under section 39-2226 in a principal

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

12 (3) Under the authority granted by Article XIII, section  
13 1, of the Constitution of Nebraska, the Legislature hereby authorizes  
14 after July 1, 2014, in addition to the authority granted in  
15 subsections (1) and (2) of this section, the issuance of bonds in one  
16 or more series in an aggregate principal amount to be determined by  
17 the commission, not to exceed two hundred million dollars. The  
18 outstanding aggregate principal amount of such bonds may exceed such  
19 limit if and to the extent that the commission determines that the  
20 issuance of advance refunding bonds under section 39-2226 in a  
21 principal amount greater than the bonds to be refunded would reduce  
22 the aggregate bond principal and interest requirements. No advance  
23 refunding bonds shall be issued with a fixed interest rate exceeding  
24 five percent or with a variable interest rate. The proceeds of such  
25 issues shall be used exclusively for purposes of the Build Nebraska

1 Act, the Legislature expressly finding that the need for such  
2 construction and reconstruction work and the vital importance of the  
3 highway system to the welfare and safety of all Nebraskans requires  
4 such action. Such bonds shall in all respects comply with the  
5 provisions of Article XIII, section 1, of the Constitution of  
6 Nebraska.

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

9           39-2224 (1) The proceeds of the sale of bonds authorized  
10 by subsection (1) of section 39-2223 are hereby appropriated to the  
11 Highway Cash Fund of the Department of Roads, for the biennium ending  
12 June 30, 1977, for expenditure for the construction of highways.

13           (2) The proceeds of the sale of bonds authorized by  
14 subsection (2) of section 39-2223 are hereby appropriated to the  
15 Highway Cash Fund of the Department of Roads for expenditure for  
16 highway construction, resurfacing, reconstruction, rehabilitation,  
17 and restoration and for the elimination or alleviation of cash-flow  
18 problems resulting from the receipt of federal funds.

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

22           Sec. 15. Section 39-2704, Revised Statutes Cumulative  
23 Supplement, 2012, is amended to read:

24           39-2704 The fund shall be used as follows:

25           (1) If directed by the State Highway Commission, money in

1 the fund shall be used for repayment of bonds issued pursuant to  
2 subsection (3) of section 39-2223;

3 ~~(1)~~ (2) At least twenty-five percent of the money  
4 credited to the fund pursuant to section 77-27,132 each fiscal year  
5 shall be used, as determined by the department, for construction of  
6 the expressway system and federally designated high priority  
7 corridors; and

8 ~~(2)~~ (3) The remaining money ~~ereditd to in~~ the fund  
9 ~~pursuant to section 77-27,132 each fiscal year~~ shall be used to pay  
10 for surface transportation projects of the highest priority as  
11 determined by the department.

12 Sec. 16. Section 66-4,100, Revised Statutes Cumulative  
13 Supplement, 2012, is amended to read:

14 66-4,100 The Highway Cash Fund and the Roads Operations  
15 Cash Fund are hereby created. If bonds are issued pursuant to  
16 subsection (2) of section 39-2223, the balance of the share of the  
17 Highway Trust Fund allocated to the Department of Roads and deposited  
18 into the Highway Restoration and Improvement Bond Fund as provided in  
19 subsection (6) of section 39-2215 and the balance of the money  
20 deposited in the Highway Restoration and Improvement Bond Fund as  
21 provided in section 39-2215.01 shall be transferred by the State  
22 Treasurer, on or before the last day of each month, to the Highway  
23 Cash Fund. If no bonds are issued pursuant to subsection (2) of  
24 section 39-2223, the share of the Highway Trust Fund allocated to the  
25 Department of Roads shall be transferred by the State Treasurer on or

1 before the last day of each month to the Highway Cash Fund.

2 If bonds are issued pursuant to subsection (3) of section  
3 39-2223, all motor vehicle fuel taxes, diesel fuel taxes, compressed  
4 fuel taxes, and alternative fuel fees related to highway use, motor  
5 vehicle registration fees, and other highway-user taxes in the  
6 Highway Cash Fund shall be and are hereby irrevocably pledged for any  
7 bonds issued after July 1, 2014, to the payment of the principal,  
8 interest, and redemption premium, if any, of such bonds as they  
9 mature and become due at maturity or prior redemption and for any  
10 reserves for such bonds, in addition to annual principal and interest  
11 paid from the State Highway Capital Improvement Fund.

12 The Legislature may direct the State Treasurer to  
13 transfer funds from the Highway Cash Fund to the Roads Operations  
14 Cash Fund. Both funds shall be expended by the department (1) for  
15 acquiring real estate, road materials, equipment, and supplies to be  
16 used in the construction, reconstruction, improvement, and  
17 maintenance of state highways, (2) for the construction,  
18 reconstruction, improvement, and maintenance of state highways,  
19 including grading, drainage, structures, surfacing, roadside  
20 development, landscaping, and other incidentals necessary for proper  
21 completion and protection of state highways as the department shall,  
22 after investigation, find and determine shall be for the best  
23 interests of the highway system of the state, either independent of  
24 or in conjunction with federal-aid money for highway purposes, (3)  
25 for the share of the department of the cost of maintenance of state

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

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

1                   Sec. 17. Original sections 39-2203, 39-2205, 39-2209,  
2 39-2211, 39-2212, 39-2213, 39-2222, 39-2223, and 39-2224, Reissue  
3 Revised Statutes of Nebraska, and sections 39-2216, 39-2704, and  
4 66-4,100, Revised Statutes Cumulative Supplement, 2012, are repealed.

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