

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 84

Introduced by Fischer, 43; Campbell, 25; Hadley, 37; Louden, 49.

Read first time January 06, 2011

Committee: Revenue

A BILL

1 FOR AN ACT relating to roads; to amend sections 39-2201, 39-2205,
2 39-2209, 39-2211, 39-2212, 39-2213, 39-2215.01, 39-2216,
3 39-2223, 39-2224, and 77-27,132, Reissue Revised Statutes
4 of Nebraska; to adopt the Build Nebraska Act; to
5 authorize issuance of highway bonds; to change
6 distribution of sales tax revenue; to harmonize
7 provisions; and to repeal the original sections.

8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 7 of this act shall be known and
2 may be cited as the Build Nebraska Act.

3 Sec. 2. For purposes of the Build Nebraska Act:

4 (1) Commission means the State Highway Commission;

5 (2) Department means the Department of Roads;

6 (3) Fund means the State Highway Capital Improvement
7 Fund; and

8 (4) Surface transportation project means (a) expansion or
9 reconstruction of a road or highway which is part of the state
10 highway system, (b) expansion or reconstruction of a bridge which is
11 part of the state highway system, or (c) construction of a new road,
12 highway, or bridge which, if built, would be a part of the state
13 highway system.

14 Sec. 3. (1) The State Highway Capital Improvement Fund is
15 created. The fund shall consist of money credited to the fund
16 pursuant to section 77-27,132, any other money as determined by the
17 Legislature, and bond proceeds credited to the fund.

18 (2) The department may create or direct the creation of
19 accounts within the fund as the department determines to be
20 appropriate and useful in administering the fund and in providing for
21 security, investment, and repayment of bonds.

22 (3) Any money in the fund available for investment shall
23 be invested by the state investment officer pursuant to the Nebraska
24 Capital Expansion Act and the Nebraska State Funds Investment Act,
25 except that any bond proceeds in the fund shall be invested in

1 accordance with the terms of the documents under which the bonds are
2 issued. Unless otherwise provided by the terms of the documents under
3 which the bonds are issued, the state investment officer may direct
4 that the bond proceeds shall be remitted to the bond trustee for
5 investment. Investment earnings from investment of money in the fund
6 and from investment of bond proceeds shall be credited to the fund.

7 Sec. 4. The fund shall be used as follows:

8 (1) Up to eighty-five percent of the total aggregate
9 money credited to the fund pursuant to section 77-27,132 shall be
10 used to pay for surface transportation projects of the highest
11 priority as determined by the department. Bonds may be issued for
12 such purpose;

13 (2) At least fifteen million dollars of the total
14 aggregate money credited to the fund pursuant to section 77-27,132
15 shall be used to pay for construction of the expressway system as
16 determined by the department. Bonds may be issued for such purpose;
17 and

18 (3) No more than twenty-five million dollars of the money
19 annually credited to the fund pursuant to section 77-27,132 may be
20 used for the payment of bonds and the interest thereon under the act.

21 Sec. 5. Upon the recommendation of the department, the
22 commission acting for and on behalf of the state may issue from time
23 to time bonds under the Nebraska Highway Bond Act in such principal
24 amounts as determined by the commission for the purpose of funding
25 the Build Nebraska Act and the fund. The principal amounts, interest

1 rates, maturities, redemption provisions, sale prices, and other
2 terms of the bonds so authorized to be issued shall be in accordance
3 with terms or conditions established by the commission. No bonds
4 shall be issued after December 31, 2018, except for refunding bonds
5 issued in accordance with the Nebraska Highway Bond Act. The proceeds
6 from the sale of any bonds issued, net of costs of issuance,
7 capitalized interest, and necessary or appropriate reserve funds,
8 shall be deposited in the fund. The commission is hereby granted all
9 powers necessary or convenient to carry out the purposes and exercise
10 the powers granted by the Build Nebraska Act. Bonds shall be paid off
11 by January 1, 2038.

12 Sec. 6. The bonds issued pursuant to section 5 of this
13 act shall be special obligations of the state payable solely and only
14 from the fund and any other funds specifically pledged by the
15 commission for such purpose, and neither the members of the
16 commission nor any person executing the bonds shall be liable
17 thereon. Such bonds shall not be a general obligation or debt of the
18 state, and they shall contain on the face thereof a statement to such
19 effect. Such bonds are declared to be issued for an essential public
20 and governmental purpose and, together with interest thereon and
21 income therefrom, shall be exempt from state income taxes.

22 Sec. 7. The department may adopt and promulgate rules and
23 regulations to carry out the Build Nebraska Act.

24 Sec. 8. Section 39-2201, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 39-2201 As used in the Nebraska Highway Bond Act, unless
2 the context otherwise requires:

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

5 ~~(2) (1) Bonds shall mean~~ means the bonds authorized to be
6 issued under the Nebraska Highway Bond Act and ~~shall include~~ includes
7 notes or other similar evidences of indebtedness;

8 ~~(3) (2) Commission shall mean~~ means the State Highway
9 Commission;

10 ~~(4) (3) Construction shall mean and include~~ means and
11 includes acquisition, construction, resurfacing, restoring,
12 rehabilitation, and reconstruction necessary to plan, build, improve,
13 replace, or extend a highway, and to construct ~~shall mean and include~~
14 means and includes to acquire, to construct, to resurface, to
15 restore, to rehabilitate, and to reconstruct as necessary to plan,
16 build, improve, replace, or extend a highway;

17 ~~(5) (4) Cost of construction shall mean and include~~ means
18 and includes obligations to contractors and builders for construction
19 and for the restoration of property damaged or destroyed in
20 connection with such construction, the cost of acquiring land,
21 property rights, rights-of-way, franchises, easements, and other
22 interests deemed necessary or convenient for construction, the cost
23 of acquiring any property, real or personal, tangible or intangible,
24 or any interest therein, deemed necessary or convenient for
25 construction, the interest requirements upon any bonds prior to,

1 during, and for a period of eighteen months after completion of
2 construction, fees and expenses of paying agents and other agents
3 appointed by the commission for such bonds during any such period,
4 the costs and expenses of preliminary investigations to determine the
5 feasibility or practicability of such construction, the fees and
6 expenses of engineers for making preliminary studies, surveys,
7 reports, estimates of costs and of revenue, and other estimates and
8 for preparing plans and specifications and supervising construction
9 as well as for the performance of all other duties of engineers in
10 relation to such construction or the issuance of bonds therefor,
11 expenses of administration during construction, legal expenses and
12 fees, financing charges, municipal bond insurance or surety bond
13 premiums, credit facility fees, costs of audits, costs of preparing
14 and issuing such bonds, and all other items of expense incident to
15 such construction, the financing thereof, and the acquisition of land
16 and property therefor;

17 ~~(6)~~(5) Fund ~~shall mean means~~ the Highway Trust Fund
18 which is created by section 39-2215; and

19 ~~(7)~~(6) Highway ~~shall mean and include means and includes~~
20 any public road now or at any time hereafter classified by the
21 Legislature as the responsibility of the state to construct and any
22 related facility, the cost of which is financed in whole or in part
23 by the issuance of bonds under the Nebraska Highway Bond Act.

24 The Legislature hereby reserves the right to vary and
25 change by law the definitions of construction, cost of construction,

1 and highway contained in this section.

2 Sec. 9. Section 39-2205, Reissue Revised Statutes of
3 Nebraska, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 39-2211 In addition to the powers conferred upon the
25 commission to secure the bonds in the Nebraska Highway Bond Act, the

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

16 Sec. 12. Section 39-2212, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 39-2212 Any pledge or security instrument made by the
19 commission shall be valid and binding from the time when the pledge
20 or security instrument is made. The money in the fund, the Highway
21 Restoration and Improvement Bond Fund, or the State Highway Capital
22 Improvement Fund ~~or bond fund~~ so pledged and entrusted shall
23 immediately be subject to the lien of such pledge or security
24 instrument upon the deposit thereof in the appropriate fund without
25 any physical delivery thereof or further act. The lien of any such

1 pledge or security instrument shall be valid and binding as against
2 all parties having subsequently arising claims of any kind in tort,
3 contract, or otherwise, irrespective of whether such parties have
4 notice thereof. Neither the resolution nor any security instrument or
5 other instrument by which a pledge or other security is created need
6 be recorded or filed and the commission shall not be required to
7 comply with any of the provisions of the Uniform Commercial Code.

8 Sec. 13. Section 39-2213, Reissue Revised Statutes of
9 Nebraska, is amended to read:

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

18 Sec. 14. Section 39-2215.01, Reissue Revised Statutes of
19 Nebraska, is amended to read:

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

23 (2) If bonds are issued pursuant to subsection (2) of
24 section 39-2223, all motor vehicle fuel taxes, diesel fuel taxes,
25 compressed fuel taxes, and alternative fuel taxes related to highway

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

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

1 Sec. 15. Section 39-2216, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 39-2216 The Legislature hereby irrevocably pledges and
4 agrees with the holders of the bonds issued under the Nebraska
5 Highway Bond Act that so long as such bonds remain outstanding and
6 unpaid it shall not repeal, diminish, or apply to any other purposes
7 the motor vehicle fuel taxes, diesel fuel taxes, compressed fuel
8 taxes, and alternative fuel taxes related to highway use, motor
9 vehicle registration fees, and such other highway-user taxes which
10 may be imposed by state law and allocated to the fund or ~~bond fund~~,
11 the Highway Restoration and Improvement Bond Fund, as the case may
12 be, or the sales and use taxes allocated to the State Highway Capital
13 Improvement Fund, if to do so would result in fifty percent of the
14 amount deposited in the fund, the Highway Restoration and Improvement
15 Bond Fund, or the State Highway Capital Improvement Fund ~~or bond fund~~
16 in each year being less than the amount equal to the maximum annual
17 principal and interest requirements of such bonds.

18 Sec. 16. Section 39-2223, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 39-2223 (1) Under the authority granted by Article XIII,
21 section 1, of the Constitution of Nebraska, the Legislature hereby
22 authorizes the issuance of bonds in the principal amount of twenty
23 million dollars in 1969 and in the principal amount of twenty million
24 dollars on or before June 30, 1977, with the proceeds thereof to be
25 used for the construction of highways in this state, the Legislature

1 expressly finding that the need for such construction requires such
2 action. Such bonds shall in all respects comply with the provisions
3 of Article XIII, section 1, of the Constitution of Nebraska.

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

23 (3) Under the authority granted by Article XIII, section
24 1, of the Constitution of Nebraska, the Legislature hereby authorizes
25 after July 1, 2013, the issuance of bonds in one or more series in an

1 aggregate principal amount to be determined by the commission, not to
2 exceed five hundred million dollars. The outstanding principal amount
3 of such bonds may exceed such limit if and to the extent that the
4 commission determines that the issuance of advance refunding bonds
5 under section 39-2226 in a principal amount greater than the bonds to
6 be refunded would reduce the aggregate bond principal and interest
7 requirements payable from the State Highway Capital Improvement Fund.
8 The proceeds of such issues shall be used exclusively for purposes of
9 the Build Nebraska Act, the Legislature expressly finding that the
10 need for such construction and reconstruction work and the vital
11 importance of the highway system to the welfare and safety of all
12 Nebraskans requires such action. Such bonds shall in all respects
13 comply with the provisions of Article XIII, section 1, of the
14 Constitution of Nebraska.

15 Sec. 17. Section 39-2224, Reissue Revised Statutes of
16 Nebraska, is amended to read:

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

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

1 problems resulting from the receipt of federal funds.

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

6 Sec. 18. Section 77-27,132, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 77-27,132 (1) There is hereby created a fund to be
9 designated the Revenue Distribution Fund which shall be set apart and
10 maintained by the Tax Commissioner. Revenue not required to be
11 credited to the General Fund or any other specified fund may be
12 credited to the Revenue Distribution Fund. Credits and refunds of
13 such revenue shall be paid from the Revenue Distribution Fund. The
14 balance of the amount credited, after credits and refunds, shall be
15 allocated as provided by the statutes creating such revenue.

16 (2) The Tax Commissioner shall pay to a depository bank
17 designated by the State Treasurer all amounts collected under the
18 Nebraska Revenue Act of 1967. The Tax Commissioner shall present to
19 the State Treasurer bank receipts showing amounts so deposited in the
20 bank, and of the amounts so deposited the State Treasurer shall:

21 (a) Credit ~~credit~~ to the Highway Trust Fund all of the
22 proceeds of the sales and use taxes derived from the sale or lease
23 for periods of more than thirty-one days of motor vehicles, trailers,
24 and semitrailers, except that the proceeds equal to any sales tax
25 rate provided for in section 77-2701.02 that is in excess of five

1 percent derived from the sale or lease for periods of more than
2 thirty-one days of motor vehicles, trailers, and semitrailers shall
3 be credited to the Highway Allocation Fund; and -

4 (b) For transactions occurring on or after July 1, 2013,
5 and before July 1, 2033, of the proceeds of the sales and use taxes
6 derived from transactions other than those listed in subdivision (2)
7 (a) of this section from any sales tax rate provided for in section
8 77-2701.02 that is in excess of five percent, credit eighty-three
9 percent to the State Highway Capital Improvement Fund and seventeen
10 percent to the Highway Allocation Fund.

11 The balance of all amounts collected under the Nebraska
12 Revenue Act of 1967 shall be credited to the General Fund.

13 Sec. 19. Original sections 39-2201, 39-2205, 39-2209,
14 39-2211, 39-2212, 39-2213, 39-2215.01, 39-2216, 39-2223, 39-2224, and
15 77-27,132, Reissue Revised Statutes of Nebraska, are repealed.