

LR 152
Nebraska Legislature, 101st Session
Transportation & Telecommunications Committee

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Executive Summary

Nebraska, along with every other state and the federal government, is facing challenges with regard to transportation funding. The nation has relied on a fuel tax to fund its highways for the better part of eight decades. However, that source of funding is losing its effectiveness. As less fuel is consumed by the public due to higher fuel prices and more fuel-efficient vehicles, revenues from the fuel tax will decline.

Nebraska has relied on the fuel tax even more so than other states; roughly 60 percent of its highway revenue comes from the tax. This reliance has presented the state with a fiscal crisis in regard to its transportation system. There are several truths in relation to Nebraska's highway funding system that need to be established:

- 1. The current funding system of relying on the fuel tax and increased fuel consumption is no longer sustainable. The funding system must be either refined or replaced with an alternative revenue source.**

Nebraska's current highway funding system relies on three main user fees: the fuel tax, sales tax on motor vehicles, and motor vehicle registrations. Of these, the fuel tax makes up roughly 60 to 65 percent of state revenues. However, the fuel tax is beginning to decline due to decreased fuel demand and more fuel-efficient vehicles. If the funding system is not changed or altered to increase highway revenue, Nebraska's highway system will fall into disrepair and expansion of the system will come to an end.

- 2. Nebraska has several high-priority capital expansion projects on hold that are costing its citizens time and dollars. In addition, 174 miles of the 1988 planned expressway system remain to be constructed.**

The state's highway needs are not diminishing in correlation with revenues; in fact the need for capital expansion and maintenance projects is increasing. The Nebraska Department of Roads (NDOR) estimated the state's 20 year highway needs at \$13 billion with inflation applied, and Nebraska is only able to cover \$6.4 billion. This means a stagnant construction program. The state has several high-priority capital improvement projects that are being delayed due to their high costs and the lack of revenue. Capital expansion of the state highway system will not take place in light of the funding situation.

One hundred and seventy-four miles of the 1988 planned expressway system remains to be completed. The Legislature has not furnished additional funding for the expressway system since 1993. No project on the expressway system is included in NDOR's needs assessment; these are projects in addition to the quantified needs due to NDOR's revised criteria standards for warranted four lane expansion based on average daily traffic (ADT) counts.

As long as these projects do not move forward, inflationary factors will continue to increase their costs. The road construction industry has seen an increase in the cost of construction materials over the past several years due in part to global competition. Inflationary costs continue to also erode the purchasing power of highway revenues as there is no factor to account for inflation in the fuel tax.

3. Nebraska is at the point where current appropriated funding will be inadequate to preserve the present highway system sometime in the next two years. Cost-cutting and re-prioritization have already taken place at the Nebraska Department of Roads through newly adopted highway standards and criteria and a new funding distribution method.

NDOR has seen the construction program fall from \$390 million in FY 06 to \$317 million in FY 09. The federal stimulus program gave a significant boost for FY 10, but NDOR estimates that the program will fall back to \$300 million after the stimulus dollars have been expended.

In response, NDOR has slowed delivery of the One Year Construction Program. NDOR has completed an internal process to re-prioritize the highway system goals, focusing on the current system's preservation and its \$7.7 billion net worth. As the dollar level continues to rise in the face of inflation to accomplish this goal of system preservation, NDOR will not be able to maintain the current system sometime in the next two years. No capital construction will take place, and the condition of our highways will deteriorate.

In order to reduce revenue needs, NDOR revised its minimum design standards and criteria, which reduced the state's 20 year needs by \$1.4 billion. NDOR also reduced operating expenses by \$16 million each year over the FY 09-10 budget biennium in order to shift a larger percentage of its budget to the construction and maintenance programs.

4. Because Nebraska employs a revenue-sharing structure that the local governments rely upon, these local political subdivisions face the same declining revenue challenges as the state and are also falling behind on street and road maintenance and construction.

The state's Highway Allocation Fund has long been a significant source of road maintenance and construction revenue for local governments. One hundred and ninety-four million dollars were distributed to the various counties and municipalities in FY 09.

Like the state, local highway needs continue to grow in the face of stagnating revenues. As long as the Highway Trust Fund remains status quo, local streets and roads will face the same fiscal challenges as the state highway system.

Alternative Funding Methods: Unless the Legislature is willing to increase the state's highway program under the current funding system, Nebraska will need to accomplish highway revenue growth in some other form than increased fuel consumption. Many alternatives may provide a potential revenue sources; however, all of the following options require an increase in some type of tax or fee, or a shift in existing state resources.

As the Transportation & Telecommunications Committee held public hearings across the state, 31 different funding options were presented by various organizations and members of the public. Testimony was almost exclusive in the support of increasing some type of fee or tax dedicated to the transportation system.

Some of these options would require Nebraska to deviate from its traditional pay-as-you-go, user fee based funding policy. Others would simply be an increase in current fees. Still others would follow the example of what other states have employed to fund their highways.

Regardless of what alternative funding options are undertaken, it is important that action is taken relatively quickly before Nebraska's highway system begins to deteriorate and new capital construction is completely halted.

Introduction

Nebraska's transportation system plays a vital role in the quality of its citizens' lives and the state's economy. It is one of the key components that allows our society to function in a mobile and widespread manner. The state is geographically large (16th largest in the U.S.), with an area of 77,358 square miles. The Nebraska economy is heavily dependent upon the agriculture and transportation industries. Having a robust and quality highway system is not only vital to the movement of goods and people, it is absolutely essential to the development and success of the state. If the highway funding structure is not altered or supplemented in the near future, Nebraska will no longer be able to afford the preservation and maintenance of its highways and streets, much less capital improvements upon them.

Nebraska has invested wisely in its highways and has much to be proud of. The March 2008 Pew Center Report on the state's Government Performance Project, as published by Governing Magazine, entitled "Measuring Performance: The State Management Report Card for 2008" reflects that Nebraska's state infrastructure is one of only 12 states receiving a B+ or higher. The July 2008 Reason Foundation Report entitled "17th Annual Report on the Performance of State Highway System (1984-2006)" reports that Nebraska has moved from 29th in 2000 to 8th in 2006 relative to the cost effectiveness of the state highway system.

Based on data reported in the Federal Highway Administration's (FHWA) 2007 Highway Statistics Report, Nebraska ranks 15th nationally in the percentage of the rural miles reported that are considered to be smooth. As reported in Better Roads Magazine 2008 Bridge Inventory (state systems only), the nationwide average for structural deficient/functional obsolete bridges is 22.2 percent. Nebraska ranks 3rd best with only 6 percent of state bridges that fall into that category.

However, Nebraska's highly rated highway system has come with a price. The cost of the construction and maintenance of highways has steadily increased over the past several years. At the same time Nebraska and its local governments, as well as the federal government, are experiencing a highway revenue crisis. The traditional method of relying on increased fuel consumption to raise fuel tax revenues is questionable long term due to economic conditions and cheaper fuel-efficient vehicles. Nebraska is feeling the impact more than some other states because it relies heavily on the fuel tax (upwards of 65 percent of total state revenues).

In response to this crisis, the Legislature's Transportation & Telecommunications Committee introduced LR 152, an interim study to analyze the current funding structure and give the public an opportunity to offer alternative funding suggestions. The committee held hearings across the state in Lincoln, Kearney, North Platte, Scottsbluff, Alliance, Columbus, Fremont, and Papillion. All hearings were well attended, and various organizations and citizens presented a number of ideas on how to solve this funding problem. There was nearly unanimous support from all testifiers for some type

of tax or fee increase to support the highway system. The committee tallied 31 different suggestions, some as simple as raising the current fuel tax.

This report is meant to be a compilation and a guideline of the potential ideas that were presented to the committee and which the Legislature may choose to pursue. In order to give the proper background, the report will discuss the current highway funding structure, the problems associated with it, and how the state has responded to the fiscal crisis.

Advantages and disadvantages are presented for some of the alternatives. Based on the information presented in this report, it is likely that a combination of these ideas will be needed to meet the required revenue increase for transportation funding. A relatively swift resolution is required in order to prevent the quality of Nebraska's transportation system from significantly suffering.

TRUTH #1: The current highway funding system of relying on the fuel tax and increased fuel consumption is no longer sustainable. The funding system must be either refined or replaced with an alternative revenue source.

Current State Highway Funding

State highway revenues come from a combination of local, state, and federal dollars:

1. State revenues provide 57 percent of Nebraska's transportation financing.

In Nebraska, highway user fees and taxes generate approximately 95 percent of state highway revenue.¹ State revenues are derived through three main user fees: the fuel tax, the sales tax on motor vehicles, and motor vehicle registration fees. Of these, the fuel tax comprises roughly 60 to 65 percent of the revenue.² From these statistics, it is easy to conclude that Nebraska is a state that relies heavily on the fuel tax. This fuel tax has been a stable policy for decades because it allowed the state to collect revenue from the users of its highways, whether they were residents of the state or traveling through. Historically, as the number of gallons of gasoline sold in Nebraska rose through increased demand, the state was able to collect more revenue through the fuel tax and keep pace with increased highway system needs.

2. 41 percent of state highway revenue is provided by the federal government.

Federal revenue consists of the return of fuel and excise taxes that are levied at the national level. Currently Nebraska receives approximately the same amount of federal funds as it remits to the federal government. That is not always the case; some states are donor states (contributing more than they receive) and others are donee states (receiving more than they contribute).

Federal funds are administered to the states through the Federal Highway Trust Fund. The fund relies heavily on the federal fuel tax for highway revenues, which fund up to 90 percent of the Federal Highway Trust Fund.³ The remaining 10 percent is derived from heavy vehicle use taxes and heavy tire taxes. The federal fuel tax is currently at 18.4 cents, and has not been increased since 1993.

¹ *Revenues*, Nebraska Dept. of Roads Annual Report 2008, pg. 26 (2008).

² <http://www.nebraskatransportation.org/city-county/pdfs/dist-bk-hwy-trust-fnd-09-10.pdf> (accessed October 2, 2009).

³ *Defining the Legacy For Users: Understanding Strategies and Implications For Highway Funding*, American Transportation Research Institute. Executive Summary, pg. 4. May 2007.

3. Revenues received from local governments makes up the remaining 2%.

Local revenues are funds contributed by cities and counties for their share of construction projects. Since NDOR administers all federal-aid highway funds, the local governments must pay the department their matching share of funding for a designated project when federal funds are used on local projects. These local matching funds become part of NDOR's budget.⁴

Nebraska Fuel Tax

The Nebraska fuel tax is derived from a complex formula. The first state fuel tax was imposed in 1925 at 2 cents per gallon. As of July 1, 2009 it is 27.3 cents (ranked 19th highest in the nation)⁵. The revenue collected from this tax is deposited into the Highway Trust Fund, where it is then divided between the Highway Allocation Fund (cities and counties) and the Highway Cash Fund (state).⁶

Currently Nebraska's fuel tax is comprised of the following:

- **2.8** cents – Local fixed portion split evenly between the counties and cities⁷.
 - **7.5** cents – State fixed portion.⁸
 - **9.7** cents – Wholesale portion split between the state (66%), counties (17%) and cities (17%)⁹
 - **6.4** cents – Variable portion apportioned to NDOR's budget.¹⁰
 - **0.9** cents – Petroleum Release Remedial Action Fee for underground storage tank cleanup.¹¹
- = **27.3** cents per gallon tax (July to December 2009).

During the 2008 legislative session, the Nebraska Legislature passed LB 846 and fundamentally altered how the fuel tax is computed. There are now two factors that can change the fuel tax formula every six months:

- 1.) The variable portion of the fuel tax is the first determining factor. During the legislative session, the Governor recommends, and the Appropriations Committee proposes to set a budget for NDOR based on Nebraska's highway system needs in conjunction with the amount of estimated highway user revenues that will be collected for that fiscal year. Twice during the year (January and July), if the actual and estimated revenues are above or below the Highway Cash Fund appropriation level, the fuel tax will be increased or reduced accordingly.¹²

⁴ *Revenues*, Nebraska Department of Roads 2008 Annual Report, pg. 26 (2008).

⁵ <http://www.nebraskatransportation.org/city-county/pdfs/fuel-tax.pdf> (accessed October 2, 2009).

⁶ Note: .9 cents per gallon is deposited into the Petroleum Release Remedial Action Fee.

⁷ Neb.Rev.Stat. § 66-4,146.

⁸ Neb.Rev.Stat.Cum.Supp. § 66- 489 (2008).

⁹ Neb.Rev.Stat.Cum.Supp. § 66-489.02 (2008).

¹⁰ Neb.Rev.Stat. § 66-4,140.

¹¹ Neb.Rev.Stat. § 66-1521.

¹² Neb.Rev.Stat. § 66-4,144.

2.) With the implementation of LB 846, Nebraska changed from taxing the quantity of gallons sold to a hybrid system that taxes both the quantity of gallons sold and the price of gasoline. This allows the state to take advantage of inflation and be able to meet the growth of construction costs that are also affected by inflation. The law took effect in July of 2009.¹³

LB 846 Formula

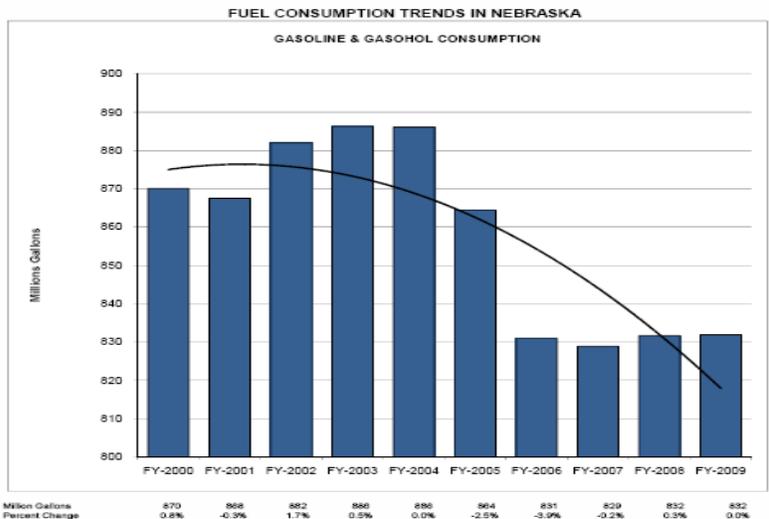
Month 1: \$2.00 avg. price
 Month 2: \$2.25 avg. price
 Month 3: \$2.50 avg. price
 Month 4: \$2.75 avg. price
 Month 5: \$3.00 avg. price
Month 6: \$3.25 avg. price
 6 Mo.Avg.: \$2.63 x 5%
 = 13 ¢ per gallon

LB 846 placed a 5 percent tax on the wholesale price of fuel as calculated by the Nebraska Department of Revenue every six months (October and April). The price is an average of the previous six months of wholesale gasoline in Nebraska.

Fuel Tax in Today's Economic Environment

Due to Nebraska's reliance on the fuel tax, its highway funding revenue stream is suffering. Demand for gasoline has stagnated in the last several years for a variety of reasons. When demand is down, fuel consumption falls and contributes less to the fuel tax revenue. In Nebraska, FY 07 was the high water mark in motor fuel tax revenue, with \$332 million collected. In FY 09, \$315 million was collected.¹⁴

As displayed in Figure 1, Nebraska is down from its high of 885 million gallons of fuel consumed in FY 04-05 to 832 million gallons consumed in FY 08-09.



consumed in FY 04-05 to 832 million gallons consumed in FY 08-09. Roughly fifty million less gallons were sold in Nebraska as compared to four years earlier. In fact, more gallons were sold in Nebraska in FY 99-00 than FY 08-09.¹⁵

Gasoline consumption is expected to remain flat or slightly decrease in the

Source: NDOR

Figure 1

¹³ During the debate of LB 846, gasoline prices were hovering around \$3.50 per gallon. After the bill was passed and the session adjourned, fuel prices plummeted in the fall of 2008 to \$1.57 per gallon. When the bill took effect, this drop in prices eventually led to a loss of approximately \$14 million for the cities and counties in their Highway Allocation distributions. The state saw no loss because the variable increased (per statutory law) to ensure that NDOR had the necessary funds to complete its highway construction program.

¹⁴ NDOR Director Monty Frederickson's Testimony on LR 152, State Capitol, Lincoln. September 11, 2009.

¹⁵ <http://www.revenue.ne.gov/fuels/gallons.htm> (accessed October 15, 2009).

near future for a number of reasons. One has been a steady increase in gasoline prices over the last three to four years. This affected people's driving habits, and the demand for gasoline fell. Even with the recent drop in prices, the state of our nation's economy has inhibited demand for gasoline to rebound as it has in the past when prices are low. Fewer gallons consumed equals less state highway revenue.

High fuel prices have also had an effect on the type of vehicles purchased. The public has begun trading in its large SUV's and trucks for smaller fuel-efficient vehicles. They are typically cheaper, which affects the amount of sales tax paid to the state, another one of Nebraska's main revenue sources for the Highway Trust Fund. In other words, the fuel efficient vehicle has a dual negative effect on the Highway Trust Fund because it uses less fuel and the owner contributes less sales tax dollars at the time of purchase.

The federal government encouraged the sale of these vehicles with a 2009 federal program. The federal government's month-long "Cash for Clunkers" program ended with almost 700,000 new vehicles purchased by consumers. The new cars averaged about 9 miles per gallon more than the traded-in vehicles. The top three vehicles traded in were the Ford Explorer SUV, the Ford F-150 Pickup, and the Jeep Grand Cherokee SUV.¹⁶ The top three vehicles purchased under the Clunkers program were the Toyota Corolla, The Honda Civic, and the Toyota Camry.¹⁷

In addition, in May 2009, the Obama Administration announced a new national standard that will create a car and light truck fleet in the United States that is almost 40 percent cleaner and more fuel-efficient by 2016, with an average of 35.5 miles per gallon (currently 25 miles per gallon).¹⁸

These changes are fostering the development of more electric and hydro vehicles that will still use the roads but will not contribute to the fuel tax. General Motors Corporation announced earlier this year that its Chevrolet Volt rechargeable electric car should get 230 miles per gallon of gasoline in city driving. The car is on schedule to reach showrooms late in 2010. In addition, Chrysler, Ford, and Daimler AG are all developing plug-ins and electric cars, and Toyota is working on a plug-in version of its fuel-electric hybrid system. Nissan announced in July 2009 that it would begin selling an electric vehicle in Japan and the United States sometime in 2010.¹⁹

In a state with such a heavy reliance on the fuel tax, these various evolutions in the automobile industry will present a challenge to Nebraska's current highway funding structure.

¹⁶ 'Clunkers' Generates 690,000 Sales, by Frank Ahrens. Washington Post. August 27, 2009.

¹⁷ *Clash For Clunkers' Top-Sellers, Top Trade-ins*, http://www.huffingtonpost.com/2009/08/26/cash-for-clunkers-top-sell_n_269700.html, (accessed October 2, 2009).

¹⁸ *Obama to Toughen Rules on Emissions and Mileage*, John M. Broder. The New York Times. May 19, 2009.

¹⁹ *GM Says New Volt To Get 230 mpg In City Driving*, Kimberly S. Johnson & Tom Krisher. Lincoln Journal Star, August 11, 2009.

TRUTH #2: Nebraska has several high-priority capital expansion projects on hold that are costing its citizens time and dollars. In addition, 174 miles of the 1988 planned expressway system remain to be constructed.

State Highway Needs

The state highway needs are not diminishing along with revenues; in fact, they are increasing. NDOR estimates the state’s highway needs at \$9.1 billion in today’s dollars. With inflation applied, the needs are estimated at \$13 billion.²⁰ Presuming an average Highway Construction Program contributing \$320 million for the next 20 years, the state would only be able to meet \$6.4 billion of the needs.²¹

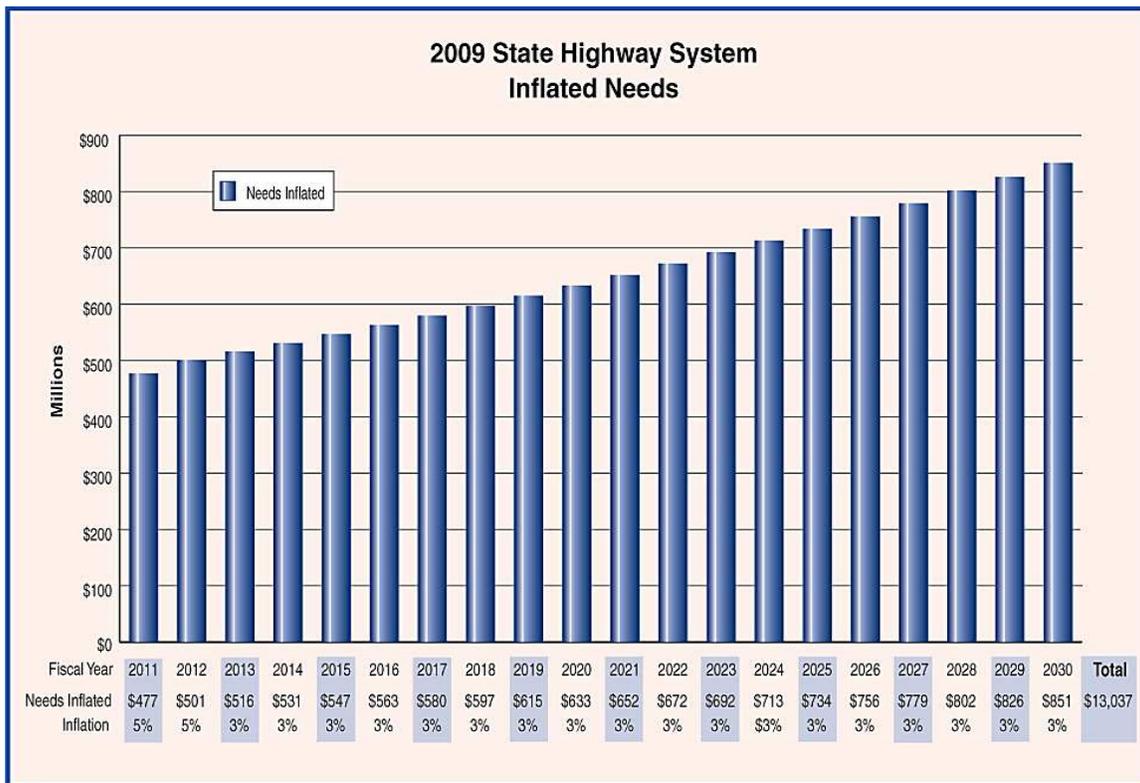
State Highway Needs

| | 2008 | 2009 |
|------------------------|------------------------|------------------------|
| Pavement Preservation | \$4,909,462,000 | \$5,514,260,000 |
| Rural Geometrics | 2,697,308,000 * | 2,837,490,000 * |
| Urban | 232,207,000 | 327,796,000 |
| Railroad Crossings | 152,800,000 | 147,800,000 |
| Missouri River Bridges | 49,807,000 | 54,091,000 |
| Miscellaneous | 195,490,000 | 196,420,000 |
| Grand Total | \$8,237,169,000 | \$9,077,797,000 |

* Includes costs for right-of-way, bridge, and municipal work.

Source: NDOR

Figure 2



Source: NDOR

Figure 3

²⁰ Executive Summary, 2009 State Highway Needs Assessment. pg. 1 (2009).

²¹ Testimony of Director Monty Fredrickson, DOR Needs Assessment Public Hearing. November 4, 2009.

Over the past two years there have been a limited number of capital expansion projects initiated across the state. A sampling of some of the state’s highest priority projects and their present day costs include:

| | |
|------------------------------------|----------------------|
| 1.) I-80 Expansion, Omaha-Lincoln: | \$114 million |
| 2.) Lincoln South Beltway: | \$175 million |
| 3.) Highway 75, Murray-Bellevue: | \$224 million |
| 4.) Highway 133, Blair-Omaha: | \$44 million |
| 5.) Highway 30, Schuyler-Fremont: | \$106 million |
| 6.) Kearney Bypass: | \$47 million |
| 7.) Highway 34, Lincoln-Eagle: | \$69 million |
| 8.) I-80 Expansion, Lincoln-York: | <u>\$370 million</u> |
| TOTAL: | \$1.15 Billion |

Source: Dpt. of Roads

Figure 4

Currently only two of these projects are on NDOR’s one or five year plans; the I-80 expansion between Omaha and Lincoln, and the Wahoo Bypass.²²

Introduction to the Expressway System

The need for an expressway system was formally identified by NDOR in 1969. The first design was approximately 2,200 miles, although not all of that system was planned four-lane divided highways. Eventually the plan was refined into a 602 mile system in 1988.²³

In relation to the expressway system, factors included in the development of the system were: (1) to connect urban centers with a population of 15,000 or greater to the Interstate System, (2) to add those routes which have an average daily traffic of 500 or more heavy commercial vehicles, and (3) to add additional segments for continuity.²⁴

The new expressway system plan was first published in the 1988 Highway Needs Study. In the report, NDOR stressed that the ability to complete that expressway system would depend upon financing decisions made by the Legislature and the Governor.

With strong public support for an accelerated program, during the 1989 legislative session the Legislature and Governor Kay Orr approved an additional \$35 million in

²² Nebraska Surface Transportation Program Book, Fiscal Years 2010 – 2015.

²³ Expressway System, 1988 Nebraska Highway Needs Study. Volume 1, Study Report. Prepared by NE Dpt. of Roads. pg. 18 (1988).

²⁴ *Id.*

highway user revenue each year for fiscal years 1990 and 1991 to begin the program. This was the equivalent of a 3.5 cent fuel tax increase. The goals of the accelerated program, among others, were to complete the major reconstruction of the inner-Omaha interstate in 10 years, and to complete an expanded Expressway System in 15 years.²⁵

Since the 1989 legislative session, no additional increases in highway user revenue to provide for accelerated completion of the expressway system have been passed. The subsequent increases in the fuel tax that have occurred since 1989 are due to the normal fluctuations the variable fuel tax system produces to ensure that NDOR is furnished with its allocated budget.

Expressway Progress

In 1988, there were 503 uncompleted miles on the rural portion of the expanded expressway system. The estimated cost was \$649 million. There were also 44 miles of the urban expressway system estimated to cost \$130 million.²⁶ Despite the fiscal shortcomings, NDOR has managed to complete approximately 428 miles of the expressway system. To date there remains 174 miles left to complete at an estimated cost of \$800 million to \$1.3 billion.

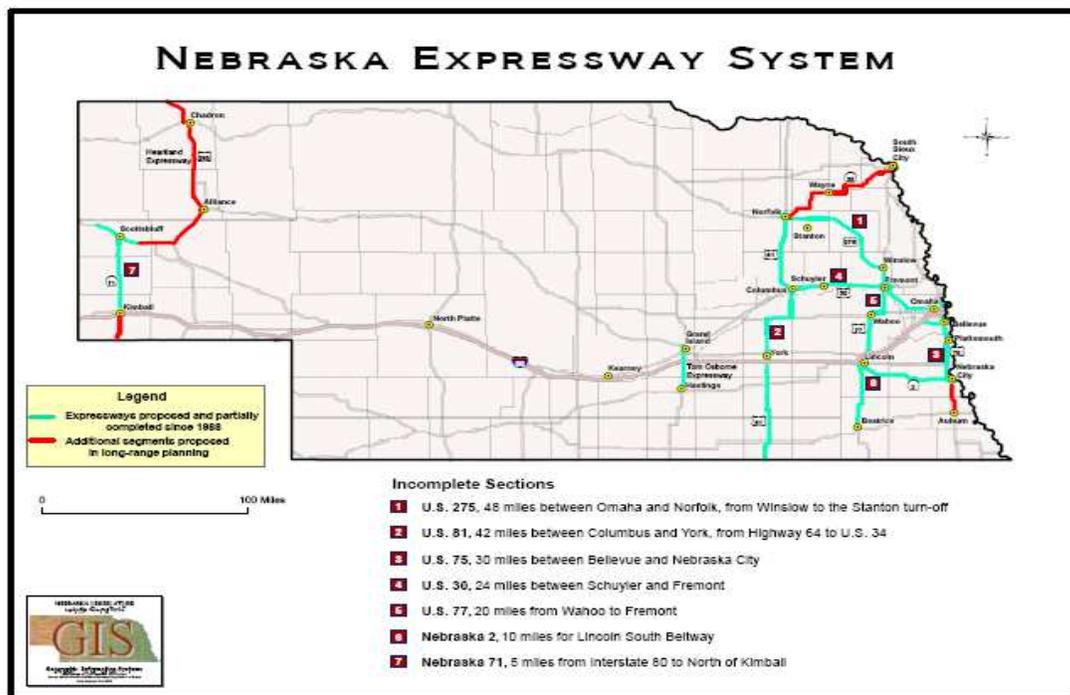


Figure 5

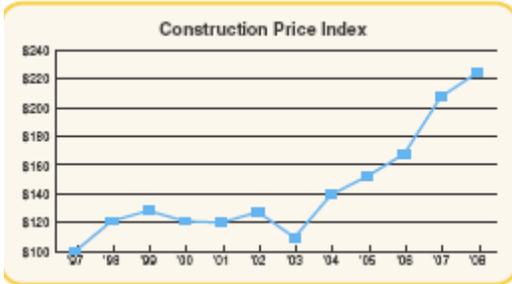
It is important to note that the expressway system is not part of the needs outlined in NDOR's 2009 Needs Assessment report. The completion of the system is in *addition* to all other needs identified by NDOR. This is due to the fact that only a scant amount of

²⁵ *Executive Summary, 1989 State Highway Plan. Volume 1: Study Report.* Prepared by NE Dept. of Roads. pg. i. (1989).

²⁶ *Id* at 22.

mileage on the expressway system warrants expansion to a four-lane highway based on NDOR's updated criteria standards.

Inflationary Impact on Needs



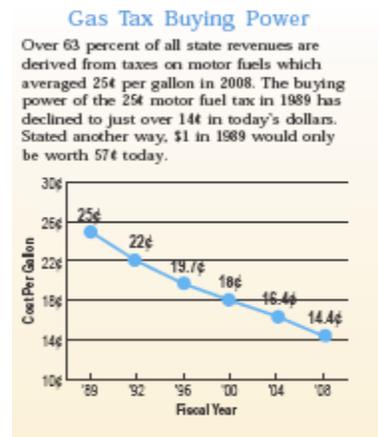
Source: NDOR

Figure 6

The cost of the identified capital improvement projects will increase every year they are not let under contract as inflationary factors take effect on construction costs. The Nebraska Department of Roads' (NDOR) Construction Cost Price Index in Figure 6 exemplifies how construction costs increased 9.3 percent in 2005, 10.1 percent in 2006, and 24 percent in 2007, for a total of 43.4 percent during this three year time period. Inflation slowed somewhat in 2008 at 7 percent due to economic turmoil. The current year is running at an approximate 4 percent rate.²⁷

This rise in costs has been spurred by increasing demand, both here in the United States as well as around the world. China, India and other countries are experiencing a construction boom, and Nebraska is competing for those resources needed to construct roads. China, with a population of 1.3 billion compared with 300 million in the United States, is building a 53,000 mile expressway system (6,000 miles more than the United States' Interstates) that is slated to be finished by 2020.²⁸

Inflation is diminishing the purchasing power of the fuel tax dollar as shown in Figure 7. Many other taxes, such as sales, property, and income taxes, maintain their productivity in the face of inflation because the tax base rises with inflation. This means that revenues from these taxes increase with rising costs. When the fuel tax is levied on a per gallon basis, however, the revenue does not respond to inflation, and the fuel tax falls further behind as inflation increases the prices of resources. There is no factor in the fuel tax to account for inflation, and the buying power of the tax has dramatically decreased over the past twenty years.²⁹ NDOR has determined that one



Source: NDOR

Figure 7

²⁷ *Surface Transportation Financing*, Nebraska Dept. of Roads Annual Report 2008, pg. 26 (2008).

²⁸ *Tolls Can't Meet Needs of Future Highway Funding*, <http://www.stateline.org/live/details/story?contentId=187179> (accessed September 12, 2007).

²⁹ By passing LB 846 in 2008, an attempt was made by the Legislature to account for inflation through tying a portion of the fuel tax to the wholesale price of gasoline. In theory, as fuel prices go up, so would the fuel tax. However, after the bill was passed and the Legislature adjourned sine die, fuel prices made a sharp decline. When LB 846 took effect in July 2009, fuel prices were much lower than estimated, and the fuel tax actually declined.

dollar in 1988 would only be worth 57 cents today.³⁰

As projects are not initiated, the costs will continue to increase and add to the burden on Nebraska's highway users through increased congestion and ultimately higher taxes to pay for them.

³⁰ *Financial Overview, Nebraska Dept. of Roads Annual Report 2008*, pg. 28 (2008).

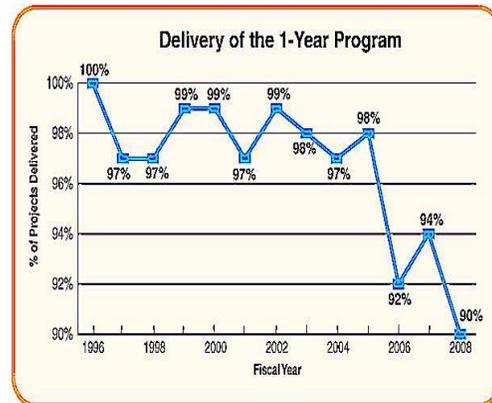
TRUTH #3: Nebraska is at the point where current appropriated funding will be inadequate to preserve the present highway system sometime in the next two years. Cost-cutting and re-prioritization have already taken place at the Nebraska Department of Roads through newly adopted highway standards and criteria and a new funding distribution method.

Nebraska Department of Roads' Response

The Nebraska Department of Roads' construction program has decreased over the last few years. NDOR had its high water mark in FY 06 with a \$390 million program. That was reduced to \$350 million in FY 07, \$341 million in FY 08, and finally \$317 million for FY 09. The current fiscal year has seen a significant increase at \$486 million, but this is due to Nebraska's share of the federal American Reinvestment and Recovery Act passed in February 2009.³¹ NDOR estimates that the FY 11 construction program will be at a \$300 million level.³² Unless more revenue is appropriated to the Highway Trust Fund, the construction program level will continue to decrease due to increasing construction costs and declining revenues.

Slowing Program Delivery

Inadequate funding has begun to impact NDOR's delivery of projects on the 1 Year Plan. Of the 143 projects in the 2008 Fiscal Year program totaling \$329.9 million, 129 projects, or 90.21 percent, were let to contract with a total project cost of \$302.1 million. As reflected in Figure 8, the FY 08 percentage of projects let to contract is lower than previous years due to projects being delayed.³³ Delivery of planned projects will continue to be a concern with an unstable source of funding.



Source: NDOR

Figure 8

Prioritization

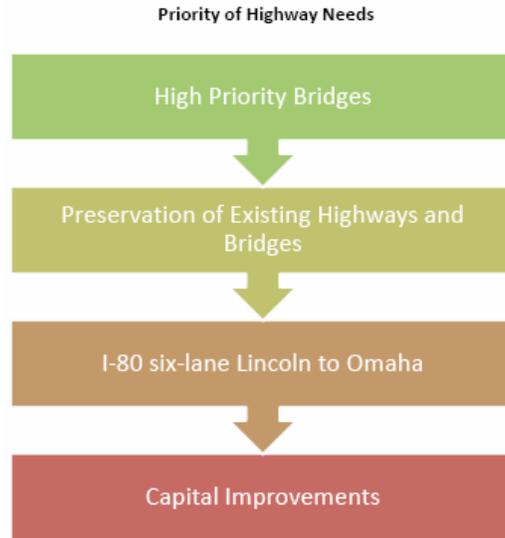
Due to this construction program contraction, NDOR has had to reassess its priorities. A process of establishing a priority for expenditures and determining new procedures for the allocation of highway construction funds was begun in 2007 with the newly formed Funding Distribution Team. In its December 2008 Final Report, the Team presented its

³¹ H.R. 1: American Recovery and Reinvestment Act of 2009, 111th Cong. (2009) (enacted).

³² NDOR Director Monty Frederickson's Testimony, DOR Needs Assessment Hearing. State Capitol, Lincoln, Nebraska. November 4, 2009.

³³ *Mobility*, Nebraska Dept. of Roads 2008 Annual Report, pg. 8 (2008).

recommendations to NDOR and the Nebraska Highway Commission, giving top priority to preserving the state’s existing highways and bridge assets.



Source: NDOR

Figure 9

The state’s existing highway net assets are valued at approximately \$7.7 billion.³⁴ Maintaining the current system is NDOR’s number one priority. However, the cost to accomplish this goal is continuing to rise in the face of current economic circumstances. In 2007, NDOR began to estimate an approximate level of how much it costs each year to preserve the current state highway system. The initial number was estimated at approximately \$177 million out of the construction program (\$350 million in FY 07). For FY 08, the number rose to \$188 million to preserve the system out of a \$341 million construction program level.

Construction Program Level vs. System Preservation Level (in millions)

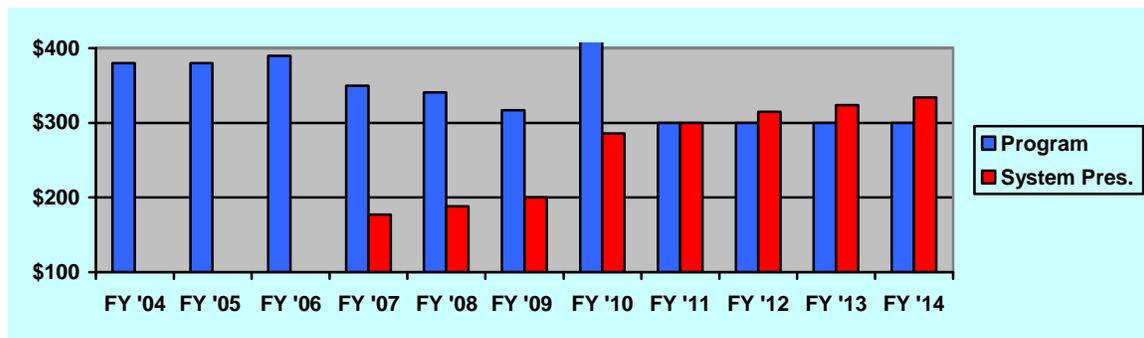


Figure 10

As displayed in Figure 10, the construction program level is compared to the system preservation level.³⁵ These numbers are rapidly approaching each other and will invert

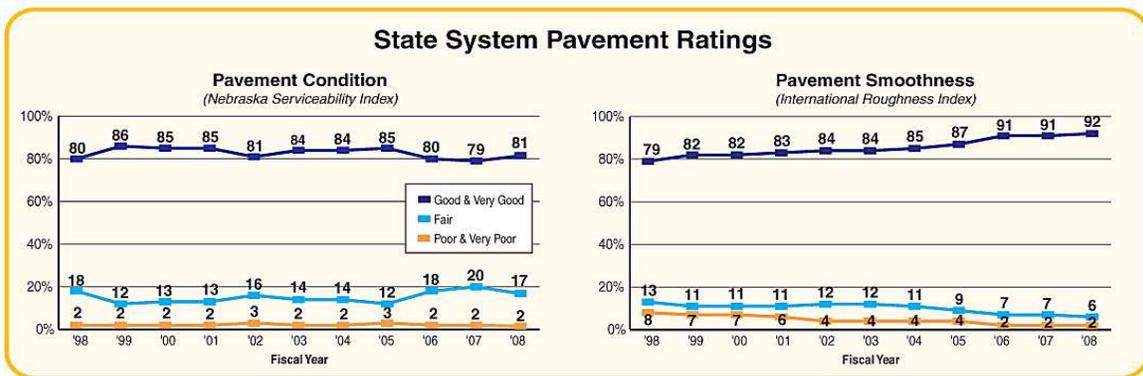
³⁴ *Net Asset Value*, Nebraska Dept. of Roads 2008 Annual Report, pg. 26 (2008).

³⁵ Note: Starting with FY '10, NDOR began to estimate the system preservation level with both non-interstate and Interstate needs. Before this time, only non-interstate needs were included.

in the near future. When they do eventually meet and invert, Nebraska will no longer have enough revenue to maintain its current highway system, much less add needed capacity. As previously stated, NDOR is estimating a \$300 million construction program for FY 11. NDOR is also estimating that the system preservation level will increase to \$300 million in FY 11 due to increased interstate needs and inflation.³⁶

If the construction program level remains consistent at \$300 million, the system preservation level will outpace the construction program by FY 12 and several preservation projects will not be undertaken because of this funding shortfall. Maintaining the existing system in its current condition will no longer be possible.

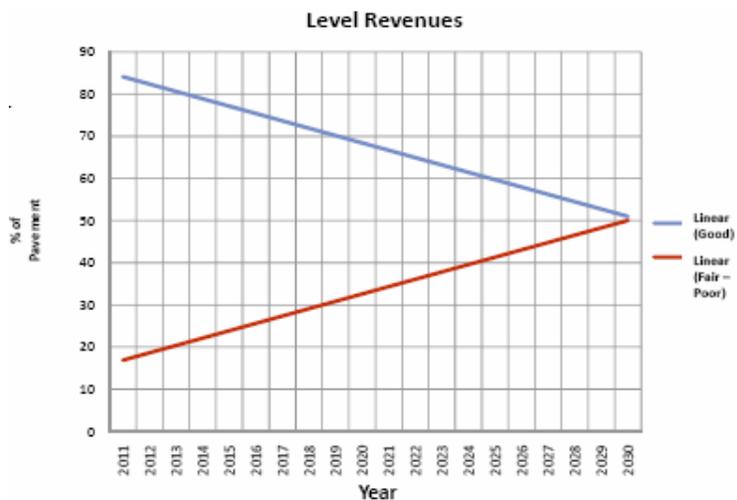
The present situation of Nebraska’s state highway system is excellent, as evidenced by Figure 11, and has stayed relatively consistent over a period of several decades. NDOR has been steadfast in its attention to the preservation and upkeep of the present state highway system.



Source: NDOR

Figure 11

If revenues continue to stagnate and not keep pace with inflation, the integrity of Nebraska’s highway system will suffer. As an example, Figure 12 shows how the condition of non-Interstate highways will deteriorate if NDOR’s budget remains static for the next twenty years.



Source: NDOR

Figure 12

³⁶NDOR Director Monty Fredrickson’s Testimony, DOR Needs Assessment Public Hearing. State Capitol, Lincoln, Nebraska. November 4, 2009.

The blue line in Figure 12 shows the decrease in percent of miles in good condition. The red line shows the increase in percent of miles in fair to poor condition.

Capital Improvement Ranking System

NDOR’s Funding Distribution Team provided a recommendation with the new selection process using a two-tier system based upon estimated economic benefit to highway users.³⁷ Tier I considers the engineering economics of the project. This ranking will account for 60 percent of the overall ranking. Tier II considers factors about the improvement’s importance to the entire state. This ranking will account for 40 percent of the overall ranking.³⁸ The new system attempts to make the selection of capital improvement projects as objective as possible.

Minimum Design Standards

In 2007, NDOR re-visited the criteria used to decide what roads should be improved and what specific design standards should be used for those improvements. The criteria included lane and shoulder width, as well as average daily traffic counts that warranted four lane highways as shown in Figure 13. The needs criteria were revised in accordance with the American Association of State Highway and Transportation Officials (AASHTO) guidelines. As a result, the highway system needs were reduced by \$1.4 billion.³⁹

| ADT | Old Criteria | | New Criteria | ADT |
|---|---|-------------------|---|------------------|
| 3000 & Greater | 12 Ft. | Surf. Lane Width | 12 Ft. | 4000 and Greater |
| | 10 Ft. | Shld. Width | 8 Ft. | |
| | 8 Ft. | Paved Shld. Width | 6 Ft. | |
| | No Crest VC below 55 MPH | Stopping Sight | One Crest below 55 MPH per Mi. No crest below 45 MPH. No Sag below 40 MPH | |
| | ADT greater than 6000 | 4-Lane Warrants | ADT greater than 10,000 | |
| 1700-2999 | 12 Ft. | Surf. Lane Width | 12 Ft. | 2000 - 3999 |
| | 8 Ft.  | Shld. Width | 6 Ft. | |
| | 8 Ft. if on Prior. Comm. | Paved Shld. Width | 2 Ft. | |
| | No Crest VC below 55 MPH | Stopping Sight | Two Crest VC below 55 MPH per Mi. No Crest below 40 MPH No Sag below 35 MPH | |
| 400-1699 | 12 Ft. | Surf. Lane Width | 12 Ft. | 750-1999 |
| | 6 Ft.  | Shld. Width | 3 Ft. | |
| | 8 Ft. if on Prior. Comm. | Paved Shld. Width | Existing | |
| | No Crest VC below 45 MPH | Stopping Sight | No Crest VC below 40 MPH Existing Sag VC conditions | |
| Under 400 | 12 Ft. | Surf. Lane Width | 11 Ft. | Under 750 |
| | 4 Ft. | Shld. Width | 2 Ft. | |
| | None | Paved Shld. Width | Existing | |
| | No Crest VC below 40 MPH | Stopping Sight | No Crest below 40 MPH Existing Sag conditions | |
|  10 Ft. if on the Priority Commercial System | | | | |

Source: NDOR

Figure 13

³⁷ *New Procedures for Allocation of Highway Construction Funds*, Nebraska Dept. of Roads 2008 Annual Report, pg. 8 (2008).

³⁸ *Capital Improvements*, Funding Distribution Team Final Report, pg. 12. (2008).

³⁹ *Testimony of Director John Craig*, DOR Needs Assessment Public Hearing. State Capitol, Lincoln, Nebraska. November 9, 2007.

Diversion of Current Funds

NDOR has looked internally to cut administration and operating expenses and shift funds to highway construction. NDOR reduced its operating budget by \$16 million each year over the FY '09-10 budget biennium and redirected the savings towards the construction and maintenance programs.⁴⁰

During the 2009 Special Session, NDOR was required to cut \$12.3 million from the Administration, Services and Support, and Transit Aid budget categories and shift the funds to the construction and maintenance programs.⁴¹ These shifts in funding have allowed NDOR to maintain the construction program level above the \$300 million watermark to date.

⁴⁰ *Testimony of Director Monty Fredrickson*, LR 152 Public Hearing. Lincoln, Nebraska, September 11, 2009.

⁴¹ *Committee Wraps Up Budget Cuts*, by Martha Stoddard. [Omaha World-Herald](#), November 13, 2009.

TRUTH #4: Because Nebraska employs a revenue-sharing structure that the local governments rely heavily upon, these local political subdivisions face the same declining revenue challenges as the state and are also falling behind on street and road maintenance and construction.

The state Highway Allocation Fund has long been a significant source of county and municipality road maintenance and construction dollars. Approximately \$194 million was distributed to local governments from the Allocation Fund in FY 09.⁴²

The Fund is divided evenly between the two local entity categories, and then apportioned based on a statutory formula.⁴³ Counties have a more weighted balance towards rural areas than municipalities do as shown by Figure 14.

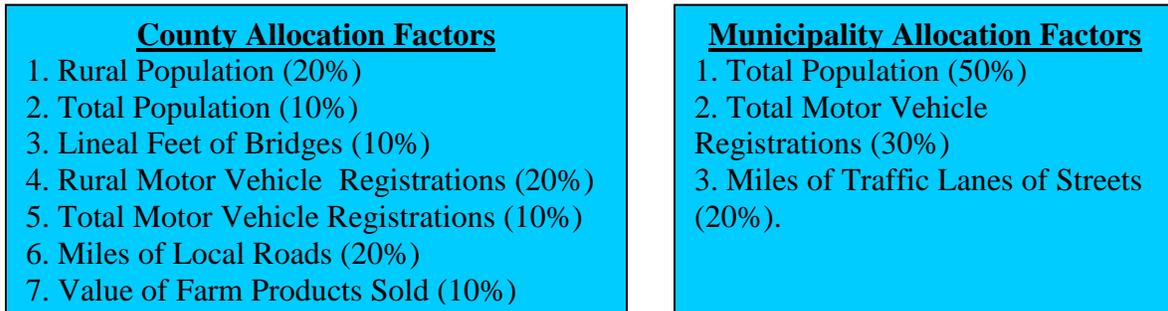


Figure 14

Typically, the larger population the county has, the more it relies on the Allocation Formula to fund its roads. In FY 08-09, Douglas County reported spending \$26.5 million for operating expenses and capital outlays for highways/roads. Of that total, \$10.8 million of these funds came from the Allocation Fund.⁴⁴ That is roughly 41 percent of Douglas County's budget for roads. In Hamilton County, out of a \$2.34 million road budget, \$932,000 comes from the Allocation Fund, or 40 percent.⁴⁵

A rough estimate shows that a county will usually garner 25 to 40 percent of its yearly total of highway revenue from the Highway Allocation Fund.⁴⁶

Municipalities rely more heavily on the Allocation Fund than counties. According to Omaha's 2008 Budget, \$26,746,150 of its \$72,190,588 revenues for public works came

⁴² <http://www.nebraskatransportation.org/city-county/pdfs/distbookcocityfy-09.pdf>, (accessed December 2, 2009).

⁴³ Neb.Rev.Stat. §§ 39-2507 and 39-2517.

⁴⁴ 2008-09 Budget Information on Nebraska Counties, Nebraska Auditor of Public Accounts website, <http://www.auditors.state.ne.us/local/budget/2009/county/>, (accessed December 2, 2009).

⁴⁵ Id.

⁴⁶ Id.

from the state Highway Allocation Fund. Another \$12,820,000 came from federal aid. Therefore, in 2008, Omaha received roughly 54 percent of its overall revenue from the state and federal government for street maintenance and construction.⁴⁷

For FY 08-09, 45 percent of Sidney's highway budget came from the Allocation Fund, Grand Island - 46 percent, Ogallala – 43 percent, and McCook – 60 percent.⁴⁸ A rough estimate shows that a municipality will usually garner 30 to 45 percent of its annual highway revenue from the Highway Allocation Fund.⁴⁹

Growing Needs

Local governments' needs continue to grow. A study done for the Metropolitan Area Planning Agency (MAPA) in 2004 concluded that the Omaha metro area's future needs were \$2.1 billion.⁵⁰

The city of Lincoln has traditionally used its state Highway Allocation funds to pay its street operation and maintenance costs. Due to increasing needs and the stagnation of the Allocation Fund, the city estimates that this current revenue level will no longer be able to pay those costs by approximately 2014.⁵¹

The 2004 Governor's Transportation Task Force Report quantified the counties' and cities' collective estimated project costs at \$2.47 billion.⁵²

⁴⁷ City of Omaha 2008 Budget Memo from Jack Cheloha, Registered Lobbyist for the City of Omaha, to Dusty Vaughan, legal counsel of the Transportation & Telecommunications Committee. March 2008.

⁴⁸ 2008-09 Budget Information on Nebraska Municipalities, Nebraska Auditor of Public Accounts website <http://www.auditors.state.ne.us/local/budget/2009/municipal/>, (accessed December 3, 2009).

⁴⁹ Id.

⁵⁰ *Transportation Funding Study, Douglas and Sarpy Counties*, HDR. Prepared for MAPA. October 2004. pg. 4.

⁵¹ LR 152 Public Hearing, testimony of Mayor Chris Beutler. Lincoln, Nebraska. September 11, 2009.

⁵² *Overview of Community Needs, Final Report Presented to Governor Mike Johanns*. Transportation Task Force For Nebraska's Future, pg. 29. January 6, 2004.

Unless the Legislature is willing to increase the state's highway program under the current funding system, Nebraska must accomplish highway revenue growth in some other form than increased fuel consumption. Many alternatives may provide potential revenue sources; however, all of the following options require an increase in some type of tax or fee, or a shift in existing state resources.

As the Transportation & Telecommunications Committee traveled across the state, several main themes were heard from the testifiers who participated at the public hearings shown in Figure 15. During the hearings, 31 different ideas were presented as a potential source of highway funds. Some ideas were heard frequently such as increasing the fuel tax. Testimony was almost exclusive in the support of increasing transportation funding through the increase of some type of fee.

Repeated Public Themes

- *Protect the integrity of the Highway Trust Fund.
- *Keep the Variable Fuel Tax in Place.
- *Importance of the Expressway completion to affected communities.
- *Minimize the Effects of LB 846 on the local governments.
- *Consider Bonding if it has a dedicated revenue source.

Figure 15

Alternative Funding Methods

Nebraska has been consistent in its policy of funding highways through a pay-as-you-go user fee concept. All other states fund their highways with the fuel tax and registration fees in some fashion, but in addition a majority of states have employed a variety of other funding concepts. States have used general fund revenues, added toll lanes, sold their highway assets to private investors, and issued massive bond securities.

As previously noted, Nebraska has relied heavily on the fuel tax and other user fees to meet its highway needs. Presented below are 31 different revenue options that were offered to the Transportation & Telecommunications Committee to consider in order to meet Nebraska's highway funding needs. The options are grouped into six main categories: the Fuel Tax, Registration Fees, Local Government Options, Indirect Transportation Fees, New Fees, and Other States' Funding Options.

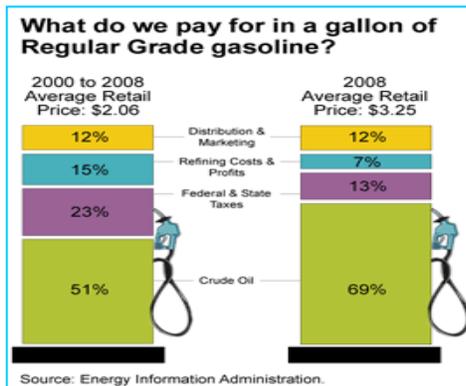
The information presented herein is not meant to give a recommendation on each funding option, but to merely give background information on how their application would work in Nebraska.

Fuel Tax

1. Fuel Tax Increase
2. Index the Fuel Tax to Inflation
3. Index the Fuel Tax to Highway Maintenance

1.) Fuel Tax Increase

In Nebraska, each cent of fuel tax raises an additional \$12 million. Fuel tax increases to fund roads is seen as more equitable than other mechanisms because it is considered a “user fee”. It puts the burden of roads funding squarely on the people who use the highway and street system the most.



In recent years, a fuel tax increase has become synonymous with controversy. Even though the fuel tax makes up a smaller portion of the overall cost of gasoline as the price has risen over time, it has been perceived that an increase is “piling on” to the consumer.

As discussed previously, there are several different categories that comprise the Nebraska fuel tax. Any one of them could be increased, and they would all have different outcomes on highway funding:

- Raise the 2.8 cents that goes directly to the cities and counties.*** This portion of the fuel tax goes directly to the Highway Allocation Fund. The state does not share any of the revenues in the Allocation Fund, and thus would not receive any additional revenue through this option. However, an increase in the 2.8 cents could lead to a property tax reduction based on the additional revenue being dedicated for roads and streets. This of course would depend on how local governments allocate revenue previously spent on roads. This portion of the fuel tax has not been increased since 1985.⁵³
- Raise the 7.5 cents fixed state portion.*** This portion of the tax goes directly to the Highway Cash Fund for NDOR of Road’s budget. The local governments would not receive any additional revenue through this option. Any increase in this portion would be used in the state’s highway construction program.
- Raise the variable through the normal Appropriations process.*** The variable portion of the fuel tax goes directly to the Highway Cash Fund. This fund is not shared by cities and counties, and they receive no direct

⁵³ *Chronology of NE Motor Fuel Tax Rates, Cents Per Gallon Tax.* Dept. of Roads. <http://www.nebraskatransportation.org/budget-n-finance/download/taxhis-fuel-tax.pdf> (accessed September 4, 2007).

additional revenues through an increase in this scenario. Any increase in this portion would be used in the state's highway construction program.

This method was attempted in the 2008 legislative session when the body voted to increase NDOR's budget by \$14.5 million to counteract a corresponding decrease in the highway program due to NDOR negotiated salary increases. This action had the potential to raise the fuel tax approximately 1.8 cents. The governor subsequently line-item vetoed this measure.⁵⁴ The body overrode the veto and implemented the budget increase in order to maintain NDOR's construction program budget for FY 09-10.⁵⁵

2.) Index the Fuel Tax to Inflation

This is an option that allows the fuel tax to remain sustainable going forward without increases in consumption. An indexed fuel tax structure can maintain long-term real revenue without the political battles and uncertainty that accompany the appropriations process. A true index rate takes the politics out of the decision and ties the increasing/decreasing of the fuel tax rate to an independent measuring index.

The National Surface Transportation Infrastructure Financing Commission, a blue ribbon panel appointed by Congress with solving the transportation funding problems of the federal government, recommended to Congress that it should index all future federal motor fuel taxes to inflation. The Commission believed that the Consumer Price Index (CPI) would be appropriate to use in adjusting for future inflation because of its historical consistency with average growth rates of more targeted indices and the availability of longer-term index projections.⁵⁶

Over the past two decades, at least 15 states have tried some form of variable-rate gasoline tax that adjusts automatically by being indexed to the price of gasoline, to the CPI, or to some indicator of highway construction and maintenance costs.⁵⁷ Indexing fuel tax rates to the CPI appears to be the best way of insuring that fuel tax revenues keep pace with inflation. The CPI program produces monthly data on changes in the prices paid by urban consumers for a representative basket of goods and services. The change in the CPI is a measure of inflation.

In 1985 Wisconsin passed a bill that established a procedure for indexing of the fuel tax rate based on inflation and changes in fuel consumption. From 1997 until 2005, the statute was changed to tie the increase/decrease of the fuel tax directly to the CPI. In no

⁵⁴ Message from the Governor. Legislative Journal, 100th Legislature, Second Session, Fifty-Second Day, April 2, 2008, pg. 1282-83.

⁵⁵ Motion to Override Line-Item Veto on LB 959. Legislative Journal, 100th Legislature, Second Session, Fifty-Fourth Day, April 7, 2008, pg. 1330-31.

⁵⁶ http://financecommission.dot.gov/Documents/NSTIF_Commission_Final_Report_Mar09FNL.pdf, (accessed November 19, 2009).

⁵⁷ *Variable Rate State Gasoline Taxes*, Jeffrey Ang-Olson, Martin Wachs, Brian D. Taylor, Institute of Transportation Studies, Univ. of Cal-Berkeley, pg. 4 (1999).

year did the fuel tax increase by more than .9 cents, and in two years the tax actually went down. In 2005, the Legislature passed a bill that eliminated annual automatic adjustments due to political pressure.⁵⁸

As time passes, these incremental increases can build up into a high tax compared to other states. This can be minimized some by providing a ceiling on an annual increase.

3.) Index the Fuel Tax to Highway Maintenance

No state has attempted this option, although Nebraska comes closest with its variable portion of the fuel tax. Although the variable is directly tied to NDOR's budget and the Highway Cash Fund appropriation, it does not automatically take into account the increased maintenance and construction costs that NDOR faces annually.

As previously pointed out, since 2007 NDOR has estimated a preservation level of how much it will cost to maintain the current system. This number has risen significantly. Applying a 5 percent inflation rate for FY 11 and a 3 percent rate for subsequent years (a conservative estimate), Figure 16 demonstrates how the preservation level will quickly reach new heights.

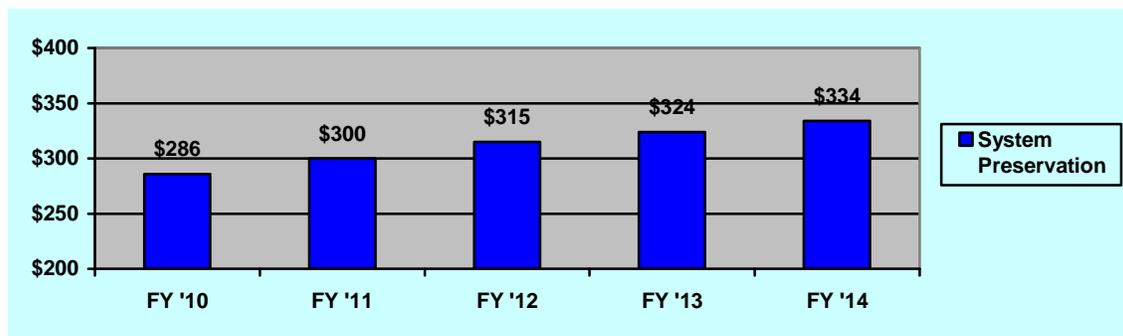


Figure 16

Indexing Nebraska's fuel tax to the preservation level to make up for the yearly increase in maintenance costs would see a consistent increase in the fuel tax. Taking into account that a cent increase in the fuel tax raises approximately \$12 million per year, it would take a 1.3 cents increase in FY 12, a .8 cent increase in FY 13, and a .8 cent increase in FY 14 to keep pace with the preservation level.

⁵⁸ Repeal of Motor Fuel Tax Indexing, Wisc. Legislative Brief 06-02, January 2006.

Registration Fees

1. State Registration Fee Increase
2. Motor Vehicle Tax Reformulation
3. Motor Vehicle Tax Shift
4. Base Motor Vehicle Fee
5. Apportioned Vehicle Registration Increase
6. Electric Vehicle Fee
7. Rescind Tax-Exempt Vehicle Status
8. Recreational Vehicle Registration Fee Increase

Nebraska’s registration fee scheme is complex. There are various components that send fee portions to different taxing entities. Certain components make up larger shares of the overall fee than other components. Registration fees are paid by Nebraska residents; this contrasts to a fuel tax that is paid by any person buying fuel in the state.

There are three main components to registration fees in Nebraska:

1. State Registration Fee,
2. Motor Vehicle Tax, and
3. Motor Vehicle Fee.

*Note: Cities also have statutory authorization to collect a Wheel Tax, although only Omaha, Lincoln, Hastings, Arlington, and Farnam have adopted such a tax. This tax is dedicated exclusively to the repairing of streets.⁵⁹

Although the State Registration Fee makes up one of the three main funding mechanisms for highway revenue in the state, it is typically a small portion of the overall registration fee. The Motor Vehicle Tax is the main culprit of the high Nebraska registration fees, accounting for upwards of 90 to 95 percent of the total as evidenced by Figure 17. Even though the Motor Vehicle Tax is a large percentage of the overall registration fee, none of it is required to be spent on transportation infrastructure. The Motor Vehicle Tax is distributed to the city, county, and school system where the vehicle is registered. The school receives 60 percent of the proceeds, with the municipality and county dividing the rest.⁶⁰

| Honda Accord | | | | |
|---------------------|------------------|---------------|---------------|------------------------|
| <u>Year</u> | <u>Reg. Fee.</u> | <u>MV Tax</u> | <u>MV Fee</u> | <u>Total Reg. Cost</u> |
| 2009 | \$20.50 | \$460 | \$20 | \$500.50 |
| 2004 | \$20.50 | \$194 | \$14 | \$228.50 |
| 1996 | \$20.50 | \$0 | \$5 | \$25.50 |

Source: NE DMV

Figure 17

⁵⁹ Neb.Rev.Stats. §§ 14-109, 15-207, 18-1214.

⁶⁰ Neb.Rev.Stat. § 60-3,186

1.) State Registration Fee Increase

The state registration fee for normal passenger vehicles is \$15.⁶¹ This fee has not been increased since 1969. An additional \$3.50 is included in the standard fee for the Department of Motor Vehicles Cash Fund (\$1.50), the Emergency Medical System Operations Fund (\$.50), and the State Recreation Road Fund (\$1.50).⁶² The county is also allowed to collect \$2 for each motor vehicle registered within its jurisdiction.⁶³

The State Registration Fee accounted for approximately \$34 million for the Highway Trust Fund in FY 09, or roughly 10 percent of highway revenue.⁶⁴ Based on the estimated 2.2 million vehicles and trailers registered in Nebraska⁶⁵, an extra \$10 would net the Highway Trust Fund an additional \$22 million per year. Because the State Registration Fee goes directly to the Highway Trust Fund, this would be the simplest method to ensure that an increase in the overall registration fee would be reserved for highway funding.

| State Registration Fee Passenger Vehicle | |
|---|--|
| \$15 – Hwy. Trust Fund | |
| \$1.50 – DMV Cash Fund | |
| \$1.50 – Recreation Rd. Fund | |
| \$.50 – Emerg. Med. Systems | |
| \$2 – County Agent Fee | |
| \$20.50 Total Registration Fee | |

2.) Motor Vehicle Tax Reformulation

Currently the Motor Vehicle Tax phases out once a vehicle reaches 14 years of age.⁶⁶ Due to this statutory policy, over 600,000 motor vehicles and trailers on Nebraska highways were not paying any motor vehicle tax in 2008⁶⁷, from a total of approximately 2.2 million registered vehicles in Nebraska.⁶⁸

The easiest solution for reformulating the Motor Vehicle Tax would be to require a base fee near the end of the vehicle’s useful life. The motor vehicle tax schedule in Figure 18 shows how no Motor Vehicle Tax is currently paid after the 14th year of the vehicle’s existence.

Going back to the Honda Accord example, Figure 17 showed that a 1996 Accord will pay no Motor Vehicle Tax because it has zeroed out according to

Motor Vehicle Tax Schedule

| Year | Reduction Factor |
|---------------------------------------|------------------|
| 1 st | 1.00 |
| 2 nd | .90 |
| 3 rd | .80 |
| 4 th | .70 |
| 5 th | .60 |
| 6 th | .51 |
| 7 th | .42 |
| 8 th | .33 |
| 9 th | .24 |
| 10 th and 11 th | .15 |
| 12 th and 13 th | .07 |
| 14 th and older | .00 |

Figure 18

⁶¹ Neb.Rev.Stat. § 60-3,143

⁶² Neb.Rev.Stat. § 60-3,156

⁶³ Neb.Rev.Stat. § 60-3,141

⁶⁴ http://www.nebraskalegislature.gov/pdf/reports/fiscal/funddescriptions_1109.pdf on pg. 173, (accessed November 19, 2009).

⁶⁵ http://www.dmv.ne.gov/dvr/pdf/mvregstats1913_2007.pdf, (accessed November 19, 2009).

⁶⁶ Neb.Rev.Stat. § 60-3,187

⁶⁷ *Motor Vehicle Tax Data Report*, compiled by Tom Bergquist, Deputy Director Legislative Fiscal Office. May 2008.

⁶⁸ <http://www.dmv.ne.gov/highwaysafety/pdf/tr7mvreg.pdf>. (accessed November 6, 2009).

the Tax Schedule. However, Figure 19 shows how a 1997 Accord will pay \$21 because it is in the last year of the reduction factor.

| Honda Accord | | | | |
|---------------------|------------------|---------------|---------------|------------------------|
| <u>Year</u> | <u>Reg. Fee.</u> | <u>MV Tax</u> | <u>MV Fee</u> | <u>Total Reg. Cost</u> |
| 1997 | \$20.50 | \$21 | \$7 | \$48.50 |
| 1996 | \$20.50 | \$0 | \$5 | \$25.50 |

Source: NE DMV

Figure 19

If current vehicles at least 14 years old were grandfathered into such a change, future vehicle owners would continue to pay the same amount of registration fees that they paid in the vehicle’s thirteenth year of existence. It could be argued that all vehicles occupying the roads would continue to pay their fair share regardless of age. A reduction of the Motor Vehicle Tax near the beginning of the vehicle’s life could also be considered with a minimum base fee to balance out the additional revenue.

As previously pointed out, the disadvantage to a Motor Vehicle Tax reformulation is the tax is not allocated to highway funding. In order to effect this change, a legislative bill would have to redirect the tax for the 14th year of a vehicle’s life and beyond to the Highway Trust Fund. This would hold the schools, cities and counties harmless because they would continue to take in the same amount of funds as before. The cities and counties would also share in the additional fees from their portion of the Highway Trust Fund money that flows to the Highway Allocation Fund.

Another reformulation of the Motor Vehicle Tax could involve averaging the current estimated cost of a vehicle’s registration over its useful life, and making the average the annual fee. This would alleviate the shock of having to pay high initial fees at the beginning of a vehicle’s life and spread the cost out over time.

3.) Motor Vehicle Tax Shift

The Motor Vehicle Tax and Motor Vehicle Fee replaced the property tax levied on motor vehicles in 1998.⁶⁹ The Motor Vehicle Tax is distributed to the city, county, and school system where the vehicle is registered. The school receives 60 percent of the proceeds with the municipality and county dividing the rest.⁷⁰ Schools across the state received over \$121 million from their allocated portion of the motor vehicle tax in 2008, which netted approximately \$201 million total.⁷¹

LB 323 in the 2009 legislative session attempted this tax shift to some degree. The bill would have re-allocated 5 percent from the schools’ portion of the tax to the cities and

⁶⁹ LB 271, (1997).

⁷⁰ Neb.Rev.Stat. § 60-3,186.

⁷¹ MV Tax and Fee spreadsheet, prepared by Bill Lock, research analyst of the Revenue Committee. 2008.

counties' portion, and would have required them to dedicate the funds to road building and maintenance.⁷² Under this scenario, the loss of motor vehicle tax revenue to schools would be replaced by General Fund state aid for those school districts that are equalized.⁷³ This replacement makes this funding option a tax shift; money is sent from the schools to the cities and counties for road construction, and it is made up by a shift of funds from the General Fund.

The state does not share in the diverted revenue under LB 323's scenario. It would take a diversion to the Highway Trust Fund to accomplish that effect. However, the Nebraska Constitution may prohibit such a shift. The Constitution provides that the tax proceeds from motor vehicles taxed in each county shall be allocated to the county and the cities, villages, and school districts of such county.⁷⁴ Although the Constitution mandates a Motor Vehicle Tax must be used for the local governing bodies, it does not mandate the amount of the tax or mention any additional fee that can be placed on a vehicle. A diversion to the Trust Fund could be accomplished by lowering the Motor Vehicle Tax and replacing it with a new fee, or increasing the existing state registration fee in the same amount as the loss to the schools.

4.) Base Motor Vehicle Fee

The Motor Vehicle Fee is distributed to cities and counties in equal shares and in the same proportion as each entity receives from the Highway Allocation Fund.⁷⁵ Unlike the Motor Vehicle Tax, the fee is required to be used for road, bridge, or street purposes.⁷⁶

| Year | Reduction Factor |
|---|---------------------|
| 1 - 5 | 1.00 |
| 6 - 10 | .70 |
| 11 and over | .35 |
| Base Fee | |
| Passenger cars and trucks with a value when new of less than \$20,000; \$20,000 - \$39,000; \$40,000 and over - | \$5 \$20 \$30 |
| Motorcycles - | \$10 |
| Cabin trailers and mobile homes - | \$10 |
| Trucks and buses - | \$30 |
| Trailers other than semi-trailers - | \$10 |
| Semi-trailers - | \$30 |

Figure 20

The Motor Vehicle Fee is levied throughout the life of the vehicle on a graduated scale.⁷⁷ From the sixth to the tenth year of the life of the vehicle, the fee is assessed at .70 of the base fee. After the eleventh year of the vehicle, the motor vehicle fee is assessed at .35 of the base fee.

⁷² *Introducer's Statement of Intent, LB 323*, Senator Tony Fulton. Transportation & Telecomm. Committee. One Hundred First Legislature – First Session. 2009.

⁷³ Fiscal Note, LB 323. Prepared by Mike Lovelace. One Hundred First Legislature – First Session. 2009.

⁷⁴ Neb.Const. Art. VIII, § 1.

⁷⁵ Neb.Rev.Stat. § 60-3,187

⁷⁶ *Id.*

⁷⁷ Neb.Rev.Stat. § 60-3,190

The motor vehicle fee has seen an incremental increase in revenue over the past several years. In FY 2000, the total amount received by cities and counties was almost \$12.8 million. By 2009, that number had climbed to \$18.9 million.⁷⁸

Like the State Registration Fee, the Motor Vehicle Fee is usually a small portion of the overall registration fee. The base fee for an automobile valued at less than \$20,000 is \$5 (\$20 valued up to \$40,000, \$30 over \$40,000).⁷⁹ Based on the reduction factor, for a vehicle valued at less than \$20,000, by the 6th year of the vehicle’s life the owner is only paying \$3.50 for the Motor Vehicle Fee. By the 11th year, the owner is only paying \$1.75.

With the Motor Vehicle Fee representing a small portion of the overall registration fee, eliminating the reduction factor for the Fee would not have a significant financial impact on the vehicle’s owner.

5.) Apportioned Vehicle Registration Rate Increase

An apportioned vehicle is a motor vehicle or trailer used in two or more jurisdictions for the transportation of people or property.⁸⁰ Apportioned registration is an optional method of registration that provides for licensing a fleet of vehicles, operating in two or more jurisdictions, by payment of fees to the base jurisdiction. The base jurisdiction is responsible for transmitting the fees owed to the affected jurisdictions.

Apportioned registration is governed by two federal programs, the Unified Carrier Registration Plan and the International Registration Plan. The Unified Carrier Registration (UCR) Program is a relatively new federal program that requires individuals and companies that operate commercial motor vehicles in interstate commerce to register their business with their base jurisdiction and pay an annual fee based on the size of their fleet.

UCR Fee Brackets (2007)

| Fleet Size (include Trailers) | Fee per Company |
|-------------------------------|-----------------|
| 0-2 | \$39.00 |
| 3-5 | \$116.00 |
| 6-20 | \$231.00 |
| 21-100 | \$806.00 |
| 101-1,000 | \$3,840.00 |
| 1,001-200,000 | \$37,500.00 |

As evidenced by Figure 21, the UCR fees are based on the number of motor vehicles owned and operated within previous 12 month period.⁸¹ They are assessed to motor carriers, freight forwarders and brokers. States have no authority to change the fee.

Nebraska’s entitlement from UCR is almost \$742,000 annually. It does not matter how much is collected by Nebraska for the program, it will only be allowed to keep the predetermined amount. The revenue is distributed to the State General Fund for public safety

Figure 21

⁷⁸ *Local Government Share State Highway User Revenues*, Handout by Monty Fredrickson, LR 152 Public Hearing. Lincoln, NE. September 11, 2009.

⁷⁹ *Id.*

⁸⁰ Neb.Rev.Stat. § 60-308.

⁸¹ <http://www.dmv.ne.gov/mcs/ucr.html>, (accessed November 20, 2009).

initiatives.⁸²

The International Registration Plan (IRP) is a licensing compact between member jurisdictions including all contiguous states, District of Columbia and the Canadian provinces. IRP registrants are required to maintain specific mileage records supporting their operation and must be provided for audit. Nebraska became a member of IRP in 1975.⁸³

IRP fees are established by each participating jurisdiction. IRP fees in Nebraska are determined by the percentage of miles traveled in each member jurisdiction and the registered combined gross weight (CGW) of each vehicle. An apportioned vehicle pays a registration fee of \$32 per ton.⁸⁴

The 2009 average IRP registration fee for an 80,000 pound, Nebraska-based vehicle was \$1,633. Of that amount, \$131 is Nebraska's average portion, while the remainder is distributed to other IRP jurisdictions. Some carriers pay more or less depending on their mileage percentage in Nebraska.⁸⁵ In 2007 Nebraska collected just over \$76 million in IRP fees from all carriers, \$30.1 million of which was retained by Nebraska and \$46.5 million of which was distributed to other IRP jurisdictions.⁸⁶

Increases in the IRP apportioned vehicle registration fee could be another funding option. Apportioned vehicles actually pay less than a vehicle registered at the county level. A 2008 model year vehicle, registered at 80,000 pounds, would pay \$2,009.59 to register at the county (\$30 – Motor Vehicle Fee, \$935.50 – State Registration Fee, and \$1,004 – Motor Vehicle Tax). The same vehicle would pay \$1,632.88 if it were registered as an apportioned vehicle.⁸⁷

The commercial vehicle industry would argue that it is already paying its fair share of taxes. The trucking industry in Nebraska paid approximately \$158.9 million in federal and state roadway taxes and fees. The industry paid 25 percent of all taxes and fees owed by Nebraska motorists, despite trucks representing only 13.1 percent of vehicle miles traveled in the state.⁸⁸

Currently Nebraska's commercial motor vehicle registration fees are competitive with surrounding states as evidenced by Figure 22, showing the full year fee for an 80,000 pound apportioned vehicle.

⁸² Memo from DMV Staff to Transportation & Telecomm. Legal Counsel, December 8, 2009.

⁸³ <http://www.dmv.ne.gov/mcs/irp.html>, (accessed November 20, 2009).

⁸⁴ Neb.Rev.Stat. § 60-3,198.

⁸⁵ Memo from DMV Staff to Transportation & Telecomm. Legal Counsel, December 8, 2009.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Nebraska Fast Facts*, American Transportation Research Institute.

| <u>Neighboring States Comparison of IRP Fees</u> | |
|--|---|
| NE: | \$1,280 |
| CO: | \$1,988.50 + tax based on vehicle price and age |
| IA: | \$1,695 |
| KS: | \$1,735 + personal property tax on each vehicle |
| MO: | \$1,719.50 |
| SD: | \$1,384 (ave.) *5+ year old vehicle is cheaper |
| WY: | \$2,225 |

Source: NE DMV

Figure 22

Any increase in the apportionable registration fee would affect not only Nebraska-based motor carriers, but any motor carrier who operates through Nebraska as part of their state's IRP program. Any attempted increase in the apportioned vehicle registration fee must keep in mind that a competitive balance with surrounding states must be maintained, or Nebraska risks losing those fees with an organization choosing to use another state as its base registration.

6.) Electric Vehicle Fee

This funding method will become more important as time goes on. As previously stated, the automobile manufacturing industry has begun to turn their attention to electric vehicles. A coalition of auto makers, battery manufacturers, utility operators and shipping companies has outlined a plan to put 100 million electric vehicles on the road by 2030 and are calling on Congress to offer tax credits for buying all-electric plug-in vehicles.⁸⁹ The Obama Administration awarded \$2.4 billion in grants out of the 2009 stimulus program to subsidize development of electric vehicle production in the U.S.⁹⁰

All-electric vehicles will be powered solely by their electric batteries. Currently, the main user fee in Nebraska that comprises the bulk of its highway funding is the fuel tax. The electric vehicle owner will not pay any fuel tax, even though the vehicle will be using the roads. If there is eventually a mass movement by the motor vehicle industry towards these types of vehicles, governments will have no choice but to move towards a new system that may involve taxing total miles traveled.

Nebraska law requires an electric vehicle owner to obtain a permit from the Department of Revenue's Motor Fuels Division.⁹¹ The permit fee is \$75, and is in lieu of any motor fuel tax that the vehicle will not pay. The fee is treated like any motor fuel tax revenue, and is deposited in the Highway Trust Fund.⁹²

A fee added to the registration of the electric vehicle equivalent to the yearly fuel tax paid by an average consumer would be an effective substitute for the fuel tax. As the DMV's

⁸⁹ *Firms Call For Electric Car Tax-Credit*, by Judith Burns. The Wall Street Journal, November 16, 2009.

⁹⁰ *Id.*

⁹¹ Neb.Rev.Stat. § 66-687

⁹² Neb.Rev.Stat. § 66-688

Vehicle, Title, and Registration (VTR) System currently has the capability to track a vehicle’s fuel type, the logistics of such a fee would not be difficult to implement.⁹³

This fee will not be a significant revenue generator as there currently are only 5 electric vehicles registered in Nebraska.⁹⁴ The industry will most likely be tested in the coastal regions of the United States and larger population cities. As the industry gains more market share, Nebraska and its local governments will be forced to address the discrepancy in different vehicles’ fuel tax contributions.

7.) Rescind Tax-Exempt Vehicle Status

Organizations and societies that are eligible for property tax exemptions in Nebraska are also eligible for an exemption to the Motor Vehicle Tax and Motor Vehicle Fee.⁹⁵ These groups include agriculture or horticulture societies, and educational, religious, charitable, or cemetery organizations.⁹⁶

In 2008, 3,655 motor vehicles registered as tax-exempt.⁹⁷ If these organizations and societies were stripped of their motor vehicle tax-exempt status, the additional revenue generated would be negligible. As tax-exempt vehicles are required to pay the State Registration Fee, the majority of additional fees would be made up of the Motor Vehicle Tax which is not dedicated to highway funding.

8.) Recreational Vehicle Registration Fee Increase

Recreational vehicles are registered and pay differing fees depending upon their weight.⁹⁸

| Recreation Vehicle | | | |
|---------------------|-------------------------|--------------------|--------------------|
| | <u>Registration Fee</u> | <u>MV Tax Base</u> | <u>MV Fee Base</u> |
| < 8000 lbs - | \$18 | \$160 | \$10 |
| 8000 – 12,000 lbs - | \$30 | \$410 | \$10 |
| 12,000 & over - | \$42 | \$860 | \$10 |

Figure 23

There were 38,071 recreational vehicles registered in Nebraska in 2008.⁹⁹ A \$10 increase in each classification of the State Registration Fee would net the Highway Trust Fund an additional \$380,000.

⁹³ Email from DMV Staff to Transportation & Telecomm Comm. Legal Counsel, November 24, 2009.

⁹⁴ *Id.*

⁹⁵ Neb.Rev.Stats. §§ 60-3,185(6) and 60-3,190.

⁹⁶ Neb.Rev.Stat. § 77-202.

⁹⁷ *2008 Vehicle Registration, 2008 DMV Annual Report.* pg. 36 (2008).

⁹⁸ Neb.Rev.Stat. § 60-3,151.

⁹⁹ *2008 Vehicle Registration, 2008 DMV Annual Report.* pg. 36 (2008).

Local Governments

1. Local Option Fuel Tax / Sales Tax
2. LB 846 Reformulation to Local Governments
3. Countywide Wheel Tax
4. Highway Allocation Revenue Outside the County Levy Limit
5. Increase / Require a Local Match for Federal Funds
6. Transportation Improvement Districts

As previously stated, Nebraska's local governments are facing the same challenge when dealing with transportation funding as the state. The alternative funding options presented under this heading would require the Legislature to cede additional authority to local governments. Any adoption of the funding options under this heading will aid Nebraska's cities and counties in their funding shortfalls, but will not solve the state's highway funding crisis.

1.) Local Option Fuel Tax / Sales Tax

Local option transportation taxes have often been palatable to elected officials because they can be viewed as indirect taxes. During the 2009 legislative session in Texas, 12 North Texas counties in the area surrounding Dallas and Fort Worth came up with a plan called the Texas Local Option Transportation Act. The bill would have given local governments the opportunity to choose among six funding options, including increased motor vehicle registration fees, increased driver license fees, an emissions fee, parking fees, a 'new resident' fee on newly registered vehicles in a county, or a local option motor fuel tax of up to 10 cents a gallon.¹⁰⁰ By authorizing local tax increases, but making them subject to voter approval, state legislators can facilitate tax increases indirectly.¹⁰¹

Local Option Fuel Tax - At least 10 states authorize a local option fuel tax.¹⁰² Historically the fuel tax in Nebraska has been a state tax with a proportionate revenue share with the local governments determined by the Legislature.

The amount of revenue that a local fuel tax could generate would depend on the population and geographic location of the area. Urban centers and communities along the Interstate would fare well in adopting such a tax. A 2004 study estimated that a local fuel tax of 7 to 7.5 cents per gallon in the Omaha metro area would generate \$30 to \$32 million annually.¹⁰³

¹⁰⁰ *Why Local Transportation Taxes Are Becoming More Important*, Billy Hamilton. State Tax Notes. August 10, 2009.

¹⁰¹ *Local Option Transportation Taxes in the United States (Part One)*, Todd Goldman, Sam Corbett, Martin Wachs. Institute of Transportation Studies, University of Cal-Berkeley. pg. 2 (2001)

¹⁰² http://www.api.org/statistics/fueltaxes/upload/State_Motor_Fuel_Excise_Tax_Notes10_2009_2.pdf (accessed December 9, 2009).

¹⁰³ *Transportation Funding Study, Douglas and Sarpy Counties*, HDR. Prepared for MAPA. October 2004. pg. 8.

Any additional local option fuel tax must take into account its effect on a state's overall fuel tax. As noted previously, Nebraska is ranked 19th highest in the fuel tax compared to other states.¹⁰⁴ In addition, a local option fuel tax would face the same problem that the state faces in its erosion of purchasing power through inflationary factors and decreased demand for gasoline.

Local Option Sales Tax - Nebraska's local municipalities and counties already have the ability to impose an additional 1.5 percent sales tax within their respective jurisdictions.¹⁰⁵ This is a general sales tax and can be used for any purpose the local government deems appropriate, including streets and roads. Counties are provided the same authority, although the revenue derived from such a tax is limited to finance public services or to provide funds for an interlocal agreement.¹⁰⁶

Any additional increase in a local option sales tax must take into account its impact on the overall sales tax rate in the state. Currently, with the maximum local sales tax in effect, the overall sales tax rate in Nebraska is 7 percent. Such an adoption dedicated to highways is also a policy shift from the traditional user fee method employed in Nebraska.

2.) LB 846 Reformulation to Local Governments

LB 846 was passed during the 2008 legislative session to change how the fuel tax is computed. An additional component, called the Wholesale Tax, was added to the fuel tax and is based on a 6 month average of the wholesale price of gasoline. This portion can rise and fall with the trends of gasoline prices over a period of time. However, there is a 1 cent increase or decrease limitation that protects the fuel tax from wild price fluctuations.¹⁰⁷

During the debate of LB 846 in March 2008, gasoline prices were hovering around \$3.50 per gallon. After the bill was passed and the session adjourned, fuel prices plummeted in the fall of 2008 to \$1.57 per gallon. When the bill took effect in July 2009, this drop in prices eventually led to a loss of approximately \$14 million for the cities and counties in their Highway Allocation distributions. The state saw no loss because the variable increased (per statutory law) to ensure that NDOR had the necessary funds to complete its highway construction program. As fuel prices continue to climb back up, the local governments will see revenue increases, but because of the statutory maximum increase of a cent per gallon every six months, it will take a significant period of time before they are made whole.

Option #1: There are two alternatives under this option. Both alternatives will require a fuel tax increase. One option would be to repeal LB 846 and revert back to the former fuel tax. Out of the 26.4 cents in current fuel tax, the local portion is approximately 6.1

¹⁰⁴ <http://www.nebraskatransportation.org/city-county/pdfs/fuel-tax.pdf> (accessed December 2, 2009).

¹⁰⁵ Neb.Rev.Stat. § 77-27,142.

¹⁰⁶ Neb.Rev.Stat. § 13-319

¹⁰⁷ Neb.Rev.Stat. § 66-489.02(2).

cents. Under the previous formula before LB 846 was implemented, the local portion was approximately 6.9 cents. Figure 23 shows that if all factors remain the same, the variable portion of the fuel tax would be increased by .8 cents to ensure that NDOR of Roads is held harmless by its proportional loss.

| Current Fuel Tax | Previous Fuel Tax |
|-------------------------------|--------------------------------|
| Local – 2.8 | Local – 2.0 |
| State - 7.5 | Fixed – 10.5 (53.3/46.7 split) |
| Wholesale – 9.7 (66/34 split) | Variable – 14.7 |
| Variable – 6.4 | |
| State: 20.3 | State: 20.3 |
| <u>Local: 6.1</u> | <u>Local: 6.9</u> |
| 26.4 cents | 27.2 cents |

Figure 24

With LB 846 and the Wholesale Tax repealed, there will be no growth in the local government’s portion of the fuel tax. The only possibility of an increase in revenue is an increase of fuel consumption, which is an unlikely scenario.

Option #2: The second alternative for correcting the loss that the local governments experienced in LB 846’s implementation would be to increase the proportional split of the Wholesale Tax between the state and local governments. Currently the split is 66 percent to the Highway Cash Fund and 34 percent to the Highway Allocation Fund.¹⁰⁸ If the proportional split were changed to a 60/40 split, Figure 25 shows the effect of the change.

| Current Fuel Tax | Alternative Fuel Tax |
|-------------------------------|-------------------------------|
| Local – 2.8 | Local – 2.0 |
| State - 7.5 | State – 7.5 |
| Wholesale – 9.7 (66/34 split) | Wholesale – 9.7 (60/40 split) |
| Variable – 6.4 | Variable – 7.0 |
| State: 20.3 | State: 20.3 |
| <u>Local: 6.1</u> | <u>Local: 6.7</u> |
| 26.4 cents | 27.0 cents |

Figure 25

The variable would be increased by .6 cents to make up for the state’s loss in the Wholesale portion of the fuel tax. Regardless of how the proportional shares are changed, the variable portion will always account for a loss in the state’s share and increase accordingly.

¹⁰⁸ Neb.Rev.Stat. § 66-489.02(3).

3.) Countywide Wheel Tax

Municipalities in Nebraska have a right to institute an additional registration fee, commonly referred to as a wheel tax, under various statutory authority.¹⁰⁹ To date only five municipalities have adopted a wheel tax. Residents pay an additional \$49 in Lincoln, \$35 in Omaha, \$12 in Hastings, \$10 in Arlington, and \$20 in Farnam.¹¹⁰

A countywide wheel tax is another funding option that the Committee heard during the study hearings. Higher population counties would obviously fare better than sparsely populated counties under this funding option. Excluding Douglas and Lancaster Counties, whose largest cities already pay a wheel tax, an additional estimated 1.5 million motor vehicles would pay a county-wide wheel tax.¹¹¹

A \$20 wheel tax rate would bring in an additional \$30.3 million per year to local governments. A county-wide wheel tax would require a proportional formula to split between the county and the municipalities located within the county. The five municipalities that are already charging a wheel tax would not want to lose any present revenue, so a county-wide tax would have to take into account an existing wheel tax within its jurisdiction and proportion the revenue accordingly.

4.) Highway Allocation Revenue Outside the County Levy Limit

Nebraska statutory law limits the growth of county and municipality budgets to 2½ percent over the previous year, or 3½ percent with a supermajority vote of the governing body.¹¹² Highway Allocation funds are considered restricted funds for purposes of budget limits.

LB 846 instituted a growth factor in the local governments' portion of the fuel tax when the bill took effect in July 2009. As fuel prices rise, the wholesale portion of the fuel tax will increase accordingly. Ironically, counties and municipalities could be prohibited from spending any additional fuel tax revenue due to the statutory budget growth limitation. There is an argument that because these funds vary based upon fuel consumption, which has varied significantly during the past two years, Highway Allocation funds should be outside of county and municipality budget limits. This would allow the local government to increase its road and street budget correspondingly with the increase in highway revenue.

5.) Increase/Require a Local Match for Federal Funds

Each state is required to "match" federal highway funds with state or local funds. The match ratio is generally 80 Federal/20 State. That means that the state pays the entire cost and is reimbursed 80 percent by the federal Department of Transportation.

¹⁰⁹ Neb.Rev.Stats. §§ 14-109, 15-207, 18-1214.

¹¹⁰ http://www.platteinstitute.org/docLib/200806201_time_for_an_overhaul_-_6-23-08.pdf, (accessed November 10, 2009).

¹¹¹ *2008 Vehicle Registration, 2008 DMV Annual Report*. pg. 36-37 (2008).

¹¹² Neb.Rev.Stat. §§ 13-519 and 77-3446.

Generally the state pays for the entire project on the state highway system even though the projects are important to the local communities that are served by the road. There are exceptions to this rule. Omaha contributed 20 percent of the total cost of the Dodge Street Expressway that was completed in 2006.¹¹³ More recently, the city of Kearney agreed to contribute \$1.5 million towards the required match for a federal earmark reserved for the Kearney Interstate Interchange.¹¹⁴ NDOR has the capability of negotiating with a local body to aid in the acceleration of a concerned project.

6.) Transportation Improvement Districts

Another popular local option is a transportation improvement district. This alternative is especially useful for transportation improvements that span multiple taxing districts because the improvement district can be defined to encompass whatever area would benefit from the transportation improvement. Several different specific types of taxes could be levied such as a local sales or property tax. The objective would be to have those users and property owners who benefit from the transportation improvement pay the cost.

A bill that would have authorized these improvement districts was introduced during the 2009 legislative session. LB 526 would have allowed for the creation of Transportation Development Districts to finance the improvement or construction of roads, bridges and related transportation structures within the district through an additional retail sales tax. The sales tax would have been required to be adopted by a majority of the voters, and could be imposed through a one-eighth percent, one-quarter percent or half percent additional sales tax.¹¹⁵ The City of Lincoln estimated that the adoption of a local sales tax authorized by the bill would raise approximately \$4.583 million (1/8%), \$9.166 million (1/4%), or \$18.133 million (1/2%).¹¹⁶ The Revenue Committee voted to indefinitely postpone the bill by a 7 to 0 margin, with one member absent.

A similar mechanism to a transportation improvement district was introduced in 2009 in the form of urban growth districts. LB 85 allowed a municipality to create one or more urban growth districts in the parts of the city's edge which have been developed since 1988. The governing body of the municipality may then issue urban growth bonds for the construction or improvement of roads, streets, streetscapes, bridges, and related structures, parks, and other public infrastructure. The urban growth bonds issued by the municipality would be secured by the pledge of the urban growth local option sales and use tax revenue.¹¹⁷

¹¹³ Memo from NDOR Staff to Transportation & Telecomm Comm. Counsel, November 16, 2009.

¹¹⁴ *Funding Safe to Construct Kearney I-80 Interchange*, by Sarah Giboney. The Kearney Hub, November 2, 2008.

¹¹⁵ *Introducer's Statement of Intent LB 536*, Senator Arnie Stuthman. Revenue Committee. One Hundred First Legislature – First Session. 2009.

¹¹⁶ *Fiscal Note, LB 536*, prepared by Doug Gibbs. February 24, 2009.

¹¹⁷ LB 85 Statement of Intent, Senator Amanda McGill. One Hundred First Legislature, 2009.

LB 85 was passed by the Legislature and signed by the Governor.¹¹⁸ The bill took effect in September 2009.

¹¹⁸ Message from the Governor, Legislative Journal. 101st Legislature, First Session, pg. 582. February 27, 2009.

Indirect Transportation Fees

1. Driver License Fee Increase
2. Tire Tax Increase
3. Train Tax Increase
4. Car Rental Fee
5. Lodging Tax Increase
6. Overweight / Oversize Permit Fee Increase
7. Eliminate Highway Trust Fund Statutory Requirements Not Related to Highways

1.) Driver License Fee Increase

Currently the fee for a five year Class O driver license is \$26.50.¹¹⁹ The revenue is divided between the DMV Cash Fund, the State General Fund, and the County General Fund.¹²⁰ The fee was recently increased in July of 2009 by \$2.50 for an identity security surcharge to cover the costs of additional security measures that the DMV adopted. These features included facial recognition technology, employee background checks and training, and central issuance of Nebraska licenses.¹²¹

As shown by Figure 26, Nebraska's driver license fees are high compared to many of its surrounding states.

| DL Fees (5 Yrs) | |
|----------------------------|-------------------|
| Nebraska \$26.50 | Iowa \$20 |
| Missouri \$45 (6 yr) | South Dakota \$20 |
| Kansas \$29 (6 yr) | Wyoming \$20 |
| Colorado \$21 | |
| Source: State DMV websites | |

Like NDOR, the Department of Motor Vehicles is a user fee, cash funded agency.

Figure 26

Historically it has relied on its license fees to fund its operations. A diversion of license fees to the Highway Trust Fund would be a shift in state policy.

2.) Tire Tax

There is currently a Nebraska Tire Fee of \$1.00 due on the retail sale of a qualified tire and every tire included with a new motor vehicle.¹²² The fee is deposited in the Waste Reduction and Recycling Incentive Fund.¹²³ The fund is dedicated for various state and local recycling and waste reduction efforts.¹²⁴

An additional tire fee or tax dedicated to the Highway Trust Fund would be a shift in state policy. The fee is currently dedicated to aid in environmental concerns that used

¹¹⁹ <http://www.dmv.ne.gov/dvr/pdf/License.pdf>, (accessed November 24, 2009).

¹²⁰ Neb.Rev.Stat. § 60-4,115.

¹²¹ Laws 2008, LB 911, § 12.

¹²² Neb.Rev.Stat. § 81-15,162.

¹²³ *Id.*

¹²⁴ Neb.Rev.Stat. § 81-15,160.

tires pose. The Tire Fee brought in approximately \$1.3 million in FY '08-09.¹²⁵ It would take a significant increase in the fee to have any impact on the Highway Trust Fund. An increase of \$5.00 per tire in the Tire Fee dedicated to the Highway Trust Fund would net approximately \$6.5 million.

3.) Train Tax Increase

Nebraska currently has a train mile tax of 7.5 cents per mile and a public grade crossing fee of \$100 per crossing.¹²⁶ The Train Mile Tax and Grade Crossing Fee totaled approximately \$3.3 million in FY 08-09.¹²⁷ The money is allocated to the Grade Crossing Protection Fund which is used for elimination and rehabilitation of at-grade railroad crossings.¹²⁸

Nebraska is the only state that taxes the railroad industry through this mile tax and crossing fee method because it is most likely preempted by federal law. Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 (the 4-R Act) prohibits states from discriminating by more than 5 percent in taxing rail transportation property and rail carriers.¹²⁹

In 2000, Wyoming enacted a similar tax to Nebraska's train mile tax and grade crossing fee.¹³⁰ Burlington Northern and Union Pacific challenged the law on the ground that it violated the 4-R Act. The U.S. 10th Circuit Court of Appeals overturned the law, concluding that the 4-R Act was a valid congressional abrogation of state immunity.¹³¹

If an attempt was made by the Legislature to increase the train mile tax or crossing fee, or to divert the funds to the Highway Trust Fund, there is a high probability that Nebraska's railroad industry would challenge such an action. Based on the 10th Circuit case, it is also highly probable that the train mile tax and grade crossing fee would be deemed preempted by federal law.

4.) Car Rental Fee

Several states, including Maine, New Jersey, Wisconsin, Michigan, and Florida, have either passed or had proposals to increase car rental taxes. There were 114 separate state and local excise taxes for renting or leasing a car in 43 states and the District of Columbia as of the end of 2008. In 1990, there were only 14.¹³² These taxes are a key funding source for public transportation projects in Wisconsin. A portion of the tax is dedicated

¹²⁵ http://www.nebraskalegislature.gov/pdf/reports/fiscal/funddescriptions_1109.pdf at pg. 377, (accessed November 24, 2009).

¹²⁶ Neb.Rev.Stat. § 74-1320.

¹²⁷ http://www.nebraskalegislature.gov/pdf/reports/fiscal/funddescriptions_1109.pdf at pg. 177, (accessed November 24, 2009).

¹²⁸ Neb.Rev.Stat. § 74-1318.

¹²⁹ 49 U.S.C. § 11501.

¹³⁰ Wyo.Stat. Ann. §§ 39-21-103 and 39-20-104.

¹³¹ *Burlington Northern & Santa Fe Railway Co. v. Burton*, 270 F.3d 942 (2001).

¹³² *Rental Car Taxes Are Getting Jacked Up*, by Gary Stoller. USA Today, November 2, 2009.

for transit in Arkansas, Florida and Pennsylvania as well. New York dedicates its rental car taxes to its highway trust fund.¹³³

Supporters of a car rental fee suggest it is a tax on out-of-state travelers. However, the car rental industry disputes that argument, contending that more than half of all car-rental revenues come from local consumers and companies.¹³⁴

In Nebraska, in addition to the state and local sales tax collected on the car rentals, there is a 4½ percent fee on the rental of private passenger vehicles that is collected by the lessor.¹³⁵ This fee is collected concurrently with the sales tax by the rental company and is used to reimburse the company for the property taxes paid on such vehicles.

| |
|---|
| <u>\$100 Car Rental Taxes in Omaha</u> |
| 7 % state/local sales tax = \$7 |
| 4.5 % prop. tax collection = \$4.50 |
| <u>Omaha Occupation tax = \$8</u> |
| Total Tax = \$19.50 |

Figure 27

If the amount of fees collected by the rental company exceeds the property tax paid on the vehicle, the excess is remitted to the county treasurer and may be used for any lawful purpose of the county.¹³⁶

Cities also have their general occupation taxing authority to impose an additional tax on car rentals.¹³⁷ Omaha imposes a car rental occupation tax of \$8.00 that goes to its general fund.¹³⁸ Lincoln has recently considered a car rental occupation tax to help pay for its proposed entertainment arena.¹³⁹

5.) Lodging Tax Increase

Lodging taxes are charged as a percentage of hotel and motel rooms, and are authorized in many states throughout the country. They are politically attractive because their entire cost is usually paid by visitors from out of town.¹⁴⁰ Over 60 percent of the nonresidents visiting Nebraska during the summer stay at hotels or motels. The state has over 28,000 hotel, motel, and bed and breakfast rooms.¹⁴¹

Nebraska imposes a 1 percent lodging tax on the total gross receipts charged for the occupancy of any space furnished by a hotel.¹⁴² The state lodging tax is paid to the State

¹³³ *Transportation & Infrastructure Finance*, A CSG National Report. Sean Slone. Chapter 4, Other Tax and Fee Mechanisms, pg. 16.

¹³⁴ *Rental Car Taxes Are Getting Jacked Up*, by Gary Stoller. USA Today, November 2, 2009.

¹³⁵ Neb.Rev.Stat. § 77-4501.

¹³⁶ <http://www.revenue.state.ne.us/info/6-373.pdf>, (accessed November 10, 2009).

¹³⁷ Neb.Rev.Stat. §§ 14-109, 15-202, 15-203, 16-205, and 17-525.

¹³⁸ http://www.cityofomaha.org/finance/images/stories/pdfs/FeeChangeLetter_20080701.pdf (accessed December 1, 2009).

¹³⁹ *City to Propose Restaurant, Other Taxes to Pay For Arena*, by Deena Winter. Lincoln Journal Star, October 13, 2009.

¹⁴⁰ *Transportation & Infrastructure Finance*, A CSG National Report. Sean Slone. Chapter 4, Other Tax and Fee Mechanisms, pg. 20.

¹⁴¹ <http://www.nebraskatravelassociation.com/pdfs/Nebraska%20Tourism%20Facts.pdf> (accessed December 2, 2009).

¹⁴² Neb.Rev.Stat. § 81-1253

Visitors Promotion Cash Fund, and brought in approximately \$3.6 million in FY 08-09.¹⁴³ The lodging tax is in addition to the general state and local sales tax.

Nebraska law also authorizes each county to charge from 1 to 4 percent on receipts from lodging. Up to 2 percent is allowed for the County Visitors Promotion Fund, and another 2 percent for the County Visitors Improvement Fund.¹⁴⁴ These funds are dedicated to the promotion and improvements of a county’s tourism and entertainment facilities. Seventy-four of Nebraska’s 93 counties have this lodging tax in some proportion.¹⁴⁵

Cities also have their general occupation taxing authority to impose an additional tax on lodging.¹⁴⁶ At least 7 Nebraska cities have implemented a lodging occupation tax.¹⁴⁷ The city of Omaha charges a 5½ percent occupation tax on hotel/motel lodging.¹⁴⁸ Grand Island and Kearney have a 2 percent lodging occupation tax.¹⁴⁹ Lincoln is considering a 4 percent lodging occupation tax to cover the costs of its proposed arena.¹⁵⁰ Figure 28 shows an example of cumulative lodging taxes in Omaha and Kearney.

| Current Sample of Lodging State/Local Taxes | | |
|--|----------------|----------------|
| Room Rate \$100: | Omaha | Kearney |
| Sales Tax | \$7 | \$7 |
| NE Lodging Tax | \$1 | \$1 |
| Co. Lodging Tax | \$4 | \$4 |
| City Occup. Tax | \$5.50 | \$2 |
| Total Taxes | \$17.50 | \$14.00 |

Figure 28

An additional 1 percent increase in the state lodging tax dedicated to the Highway Trust Fund would bring in approximately \$3.6 million. Any increase must keep in mind the impact on the lodging and tourism industry and any competitive disadvantage that higher taxes could bring.

¹⁴³ http://www.nebraskalegislature.gov/pdf/reports/fiscal/funddescriptions_1109.pdf on page 353 (accessed December 2, 2009).

¹⁴⁴ Neb.Rev.Stat. § 81-1254.

¹⁴⁵ Nebraska Tax Rate Chronologies, Table 4 – Lodging Tax. NE Dpt. of Revenue, April 2009.

¹⁴⁶ Neb.Rev.Stat. §§ 14-109, 15-202, 15-203, 16-205, and 17-525.

¹⁴⁷ <http://www.nebraskatravelassociation.com/pdfs/Nebraska%20Tourism%20Facts.pdf>, (accessed December 2, 2009).

¹⁴⁸ *Hotel Operators Protest Tourism Trims*, by Maggie O’Brien. Omaha World-Herald, July 4, 2009.

¹⁴⁹ *Lots of Funding Ideas for Local State Fair Contribution*, by Tracy Overstreet. The Grand Island Independent, April 15, 2008.

¹⁵⁰ *City to Propose Restaurant, Other Taxes to Pay For Arena*, by Deena Winter. Lincoln Journal Star, October 13, 2009.

6.) Overweight / Oversize Permit Fee Increase

Nebraska, along with every other state, charges a permit fee to allow the passage of oversized or overweight (OS/OW) commercial motor vehicles upon its highway. In a typical year, NDOR issues roughly 100,000 OS/OW permits in Nebraska totaling approximately \$2 million in fees.¹⁵¹ Many of the permits issued for OS/OW are pass-thru permits where the load is originated from outside of Nebraska, but is passing through the Nebraska to a final destination in another state.¹⁵²

The OS/OW fees are deposited into the Highway Cash Fund and are set in statute. NDOR or a local authority issuing a permit may not exceed \$25 for a 90 day period, \$50 for a 180 day period, or \$100 for a one year period.¹⁵³ The most common is the single trip permit. For a single trip, the fee is: Overdimensional only - \$15; Overweight only - \$20; both Overdimensional and Overweight - \$25.¹⁵⁴

| |
|---|
| <p>NE Single Trip Permit Overdimensional - \$15 Overweight - \$20 Both OS/OW - \$25</p> |
|---|

Several neighboring states impose an analysis fee or ton mile in addition to the standard fee to compensate for heavier loads that do the most damage to the highways. South Dakota charges 2 cents per ton mile over 85,000 lbs. Missouri charges \$20 for each 10,000 lbs over the legal gross weight, plus an analysis fee that increases up to \$925 based on the length of the trip through the state. Only Nebraska and Iowa do not charge some type of additional fee on top of the standard fee for OS/OW vehicles.¹⁵⁵

The fees from other states can add up quickly for a heavy load. As shown by Figures 29 and 30¹⁵⁶ presenting different trip scenarios, Nebraska charges a great deal less than neighboring states for single trip permits that have the potential to do great damage to its highways.

| | |
|---|------------|
| Scenario 1: Assume a load of 200,000 lbs. on 11 axles making a trip of 200 miles across each state. | |
| NE - \$20 | CO - \$130 |
| IA - \$10 | SD - \$255 |
| KS - \$50 | WY - \$538 |
| | MO - \$760 |

Source: NDOR

Figure 29

| | |
|--|--------------|
| Scenario 2: Superload – Assume a 700,000 lbs. load on 35 axles making a trip of 200 miles across each state. | |
| NE - \$20 | CO - \$380 |
| IA - \$10 | SD - \$1,255 |
| KS - \$50 | MO - \$1,880 |
| | WY - \$3,523 |

Source: NDOR

Figure 30

¹⁵¹ Memo from NDOR to Transportation & Telecomm. Comm Counsel. Prepared by Ellis Tompkins, Rail & Public Transportation Division. December 1, 2009.

¹⁵² *Id.*

¹⁵³ Neb.Rev.Stat. § 60-6,298.

¹⁵⁴ Chapter 3, 009.04. Title 415, NDOR – Rail and Public Transportation Division. Nebraska Administrative Code. Last Issue Date: January 30, 2001.

¹⁵⁵ Memo from NDOR to Transportation & Telecomm. Comm Counsel. Prepared by Ellis Tompkins, Rail & Public Transportation Division. December 1, 2009.

¹⁵⁶ A ‘superload’ is a type of load that NDOR is seeing more of passing through Nebraska.

A statutory change authorizing NDOR to charge an additional analysis fee or per ton mile fee would bring additional revenue to the Highway Cash Fund. However, any legislation should keep in mind Nebraska’s competitive edge with surrounding states.

7.) Eliminate Highway Trust Fund Statutory Requirements Not Related to Highways.

Shown by Figure 31, there are over \$14 million in Highway Trust Fund dollars that are not currently used for either NDOR’s operating expenses or for road construction and maintenance. Redirecting these funds back to the Trust Fund would require a shift in state dollars, most likely from the General Fund.

| <u>Diversion of Highway Funds FY 2010</u> | |
|---|-------------------------|
| State Patrol Carrier Enforcement Fund enforcement of NE’s weight, commercial license, and motor carrier safety laws. | \$7,300,000 |
| Transit System’s Operating Deficits Assist local transport authorities for operating deficits in public transportation. | \$3,024,088 |
| Motor Fuel Tax Enforcement Fund Dpt. of Revenue’s fund to perform motor fuel tax collections. | \$2,000,000 |
| Motor Carrier Division Cash Fund Operate the Div. of Motor Carrier Services within the DMV. | \$1,150,000 |
| State Patrol Law Enforcement NE State Patrol to provide law enforcement coverage along state road construction zones. | \$ 507,810 |
| Office of Highway Safety Match federal safety funds for the Nebraska Office of Highway Safety. | \$150,734 |
| Highway Beautification/Outdoor Ad. Permit Program Administer the above program. | <u>\$312,000</u> |
| Total | \$14,444,632 |

Source: NDOR

Figure 31

New Fees

1. Ethanol Tax
2. Sales Tax on Food / Soda

1.) *Ethanol Tax*

A severance tax is an excise tax that is imposed upon the severance or production of a state's natural resource. Most states which have oil, fuel or coal production impose a severance tax on those resources as they are produced from the ground. Ordinarily, severance taxes are imposed on non-renewable resources.

State severance taxes are favored by many states because the burden of this tax is usually exported to the buyers and users of the material resource. Ordinarily, much of the resource produced in a state is ultimately consumed in other states. Similarly, in Nebraska most of the state's agricultural and animal production is exported to other states. Nebraska currently does not impose a severance tax on these exports.

The production of ethanol has become an economic boom in Nebraska. Ethanol is a high octane liquid fuel produced by the fermentation of plant sugars. In the United States, ethanol is usually made from corn, sorghum and other grain products.

There are currently 23 ethanol production plants in Nebraska, producing more than 1.6 billion gallons of ethanol each year and requiring over 600 million bushels of grain in the process.¹⁵⁷ Nebraska ranks second nationally in ethanol production (Iowa ranks first) and is the largest ethanol producer west of the Missouri River.¹⁵⁸

Geographic position, abundant ethanol supply and reliable, competitive rail transportation give Nebraska a strategic advantage in serving ethanol markets in the western United States. All of the ethanol produced in Nebraska is shipped to the west coast and since there is no ethanol pipeline, all ethanol is shipped by railcar. Because Nebraska is closer to the west coast market than Iowa, ethanol shipped from Nebraska bears approximately 7 cents per barrel less transportation cost than ethanol produced in Iowa.¹⁵⁹ No tax is imposed by Nebraska on its ethanol exports.

A severance tax of 3 cents per gallon could generate an extra \$48 million per year of revenue for the state based on the 1.6 billion gallons being produced each year. In order to help the state's highways, the severance tax would need to be allocated to the Highway Trust Fund.

¹⁵⁷ Neb. Ethanol Industry: Ethanol Plants in Nebraska, <http://www.ne-ethanol.org/industry/ethplants.htm> (accessed September 24, 2007).

¹⁵⁸ *Id.*

¹⁵⁹ *The Nebraska Sales Tax*, Review of Commission Findings and Preliminary Conclusions. Nebraska Tax Policy Reform Commission. September 14, 2007.

2.) Sales Tax on Food/Soda

Nebraska charges no sales and use tax on meal and food products, including soft drinks and candy.¹⁶⁰ Soda has been an especially appealing avenue for a tax. Currently, 25 states impose special taxes on sugary drinks.¹⁶¹ It is seen as a “fat tax” that raises the price of soda in the same way that “sin taxes” raise the price of alcohol and tobacco. In the past 10 years, there has been a 37 percent jump in the number of people in the United States who qualify as being grossly overweight.¹⁶² There are several studies that believe soda and soft drinks are one of the main culprits behind this drastic increase.¹⁶³

There are two obstacles to imposing a tax on food or soda dedicated to highways. The first obstacle is there is no direct or indirect correlation between such a tax and highways. The concept of a user fee has always been employed in Nebraska’s highway funding. A tax on food or soda dedicated for highways would require a shift in this traditional policy. The second obstacle is such a tax is seen as regressive, or a tax that takes a larger percentage from low-income people than high-income people.

¹⁶⁰ Neb.Rev.Stat. § 77-2704.10

¹⁶¹ *Soda Tax Could Close States’ Budget Gaps*, by Jerry Hirsch. The LA Times. October 3, 2009.

¹⁶² *Battle of the Bulge*, by Penelope Lemov. Governing, pg. 18. October 2009.

¹⁶³ *Intake of Sugar-Sweetened Beverages and Weight Gain: A Systematic Review*, by Vasanti S Malik, Matthias B Schulze and Frank B Hu. <http://www.ajcn.org/cgi/content/full/84/2/274>, (accessed December 1, 2009)

Other States' Funding

1. Toll Roads
2. Bonding
3. Vehicle Miles Traveled Tax
4. Gambling Expansion
5. Rest Stop Privatization

These funding options are ones that others states have been using in some form that Nebraska does not use. Some are meant for high population areas that would not be conducive to Nebraska's low population, large geographic dynamic. Others have not fit with the state's pay-as-you-go user fee based system.

1.) Toll Roads

One popular solution for raising funds involves state and local governments adding toll lanes. The United States has about 5,200 miles of toll roads.¹⁶⁴ Total national toll road revenues jumped 22%, or \$1.5 billion, between 1998 and 2004.¹⁶⁵ In 2005, tolling earned \$7.7 billion, which was 5% of highway revenues nationally.¹⁶⁶ Tolling could increase to 9% of highway funds over the next decade.¹⁶⁷

Historically a toll road has been much less efficient in the cost of collecting revenue than the standard fuel tax. It has been estimated that the cost for collection of the federal motor fuel tax revenue is approximately 0.2 percent of the revenue collected, and costs most closely associated with tolling revenue collection ranged from 21.9 percent of revenue to 30.3 percent of revenue.¹⁶⁸

Technology has improved in the recent past that has helped alleviate collection inefficiencies. Electronic collection, or "open-road tolling", has become the norm across the nation where tolling is in effect, with overhead devices reading windshield-mounted transponders to deduct money from drivers' accounts. Overhead cameras capture license plates, and drivers without transponders get a bill in the mail. A driver equipped with an E-Z Pass transponder is able to travel from Maine to southern Virginia and west beyond Chicago and pay tolls electronically without stopping at toll booths. More than 95 percent of the nation's tolling agencies are served by E-Z Pass or TransCore, which supplies technology for electronic tolling systems.¹⁶⁹

¹⁶⁴ *Toll Roads Take Cashless Route*, by Larry Copeland. USA Today. July 27, 2008.

¹⁶⁵ *Funding Cuts Force Southern States to Reconsider Toll Rates*, USA Today. May 29, 2007.

¹⁶⁶ *Tolls Can't Meet Needs of Future Highway Funding*,
<http://www.stateline.org/live/details/story?contentId=187179> (accessed September 12, 2007).

¹⁶⁷ *Id.*

¹⁶⁸ *Defining the Legacy For Users: Understanding Strategies and Implications For Highway Funding*, American Transportation Research Institute. Executive Summary, pg. 14-15. May 2007.

¹⁶⁹ *E-Z Pass Expansion Connects Midwest and East Coast*, by Larry Copeland. USA Today, September 14, 2009.

Toll roads are not immune to a downturn in the economy. Fitch Ratings revised the outlook for toll roads from Stable to Negative. Citing continued economic weakness coupled with an approximately 33 percent increase in gasoline prices and inflationary pressures, toll roads are experiencing declines in toll paying traffic, as much as 16 percent in some areas of the nation.¹⁷⁰

A small population state like Nebraska is ill-suited for toll roads. Tolling relies on high traffic areas and each vehicle contributing a small portion for the use of the road. The only significant high traffic area in Nebraska is Interstate 80. While Congress did recently allow for the interstate system to be tolled in a few pilot projects¹⁷¹, it is not likely that Nebraska would fit the necessary criteria to be chosen as one of these projects. Pennsylvania recently re-applied to the Federal Highway Administration (FHWA) to put tolls on Interstate 80 to help pay for highway, bridge, and mass-transit projects around the state. In 2007, FHWA turned down a similar request to toll I-80. Federal officials said Pennsylvania did not meet the requirement that tolls be used only for I-80 improvements.¹⁷²

Additionally, Highway 6 and U.S. 34 are alternate routes that travelers would use to avoid the toll. This would lead to increased traffic and the corresponding safety concerns, the increased deterioration of these highways, and higher costs associated with them.

Public-Private Partnerships

Much discussion has centered around public-private partnerships, or PPPs. PPPs involve a lease of state assets. Toll road privatization takes two forms: the lease of an existing toll road to a private operator, or the construction of a new road by a private entity. In both instances, private investors are granted the right to raise and collect toll revenue. The state or government that owns the asset (usually a toll road or other toll facility) sells the rights to operate it to a private entity called the concessionaire. Under these agreements, the state still officially owns the asset, but the private entity owns a lease interest that allows it to collect all revenues the asset generates during a specific period.

These agreements are fairly common outside of the United States. Only recently have PPPs made their way into this country. Chicago officials signed a 99-year, \$1.8 billion lease in 2005 that grants a private consortium the right to operate and collect tolls from the 8-mile long Chicago Skyway. In 2006, Indiana lawmakers authorized a similar \$3.85 billion, 75-year lease with the same consortium to operate the 157-mile long Indiana Toll Road.¹⁷³ By the end of 2008, 15 highways had been privatized in 10 different states – either through long-term highway lease agreements on existing highways or the

¹⁷⁰ *U.S. Transportation Assets: Facing a Temporary Decline Or a Permanent Change?*, North American Special Report. Fitch Ratings. August 20, 2008.

¹⁷¹ 23 U.S.C. § 129 (2005).

¹⁷² *Pa. Takes Another Shot At Tolls For I-80*, by Paul Nussbaum. *Philadelphia Inquirer*, October 30, 2009.

¹⁷³ *The Money Road*, *State Legislatures*, pg. 14 (May 2007).

construction of new private toll roads. Approximately 79 roads in 25 states are under consideration for some form of privatization.¹⁷⁴

Extensive contracts govern the terms of these agreements. The contracts cover maintenance, operating standards, rights to inspection, reporting and insurance requirements, and the ability to raise toll rates. In both cases, the government must continue to provide law enforcement on the toll road, but the concessionaire must reimburse the state for law enforcement expenses.¹⁷⁵

After the initial wave in the United States, governmental entities have become wary of these PPPs. The House of Representative's Committee on Transportation and Infrastructure sent a letter to state transportation elected officials discouraging them from entering into PPP's.¹⁷⁶ Critics warn that private toll roads create bad long-term deals for the state and benefit businesses and their investors more than the public. Private ventures have monopolized routes. Others have defaulted and closed highways.¹⁷⁷ Other concerns include lack of efficient maintenance standards, potential toll hikes, and the possibility that PPPs could inhibit future roadway construction and maintenance.

The chance to increase significant upfront highway funding revenue from a PPP agreement is appealing. It can also be an alternative to raising user fees. However, it can be safely stated that the money initially gained by the state will be spent long before the end of the agreement. With no existing toll roads and no high traffic roads other than Interstate 80, it would also be difficult to implement a PPP in Nebraska.

2.) Bonding

Bonds are a common mechanism that other states use to borrow money for transportation projects. Forty-one states currently have outstanding bonds for road construction.¹⁷⁸

Current Nebraska statutes authorize the issuance of up to \$50 million in highway bonds. Bonds can be issued and proceeds used under one of two conditions: (1) for construction and reconstruction work of the highway system when the welfare and safety of Nebraskans require such actions as determined by the Legislature, or (2) to eliminate cash-flow problems resulting from the receipt of federal funds.¹⁷⁹

Bonding for highway construction has been done one time in Nebraska's history. In 1969, the Legislature authorized a \$20 million bond issue for the purpose of accelerating the completion of the Interstate System, and incurred a debt of \$32,520,415 in the

¹⁷⁴ *Private Roads, Public Costs*, Executive Summary. U.S. PIRG Education Fund. pg. 1. Spring 2009.

¹⁷⁵ *The Money Road, State Legislatures*, pg. 14 (May 2007).

¹⁷⁶ Letter to Neb. State Senator Deb Fischer, Chair of the Transportation & Telecomm. Comm., from U.S. House of Rep. Comm. On Transp. & Infrastructure, received May 15, 2007.

¹⁷⁷ *Arizona Making Way For Creation of Private Toll Roads*, by Sean Holstege. [The Arizona Republic](#), October 16, 2009.

¹⁷⁸ *Potholes May Lie in Funding Path For Road Work*, by Henry J. Cordes. [Omaha World-Herald](#). January 2, 2009.

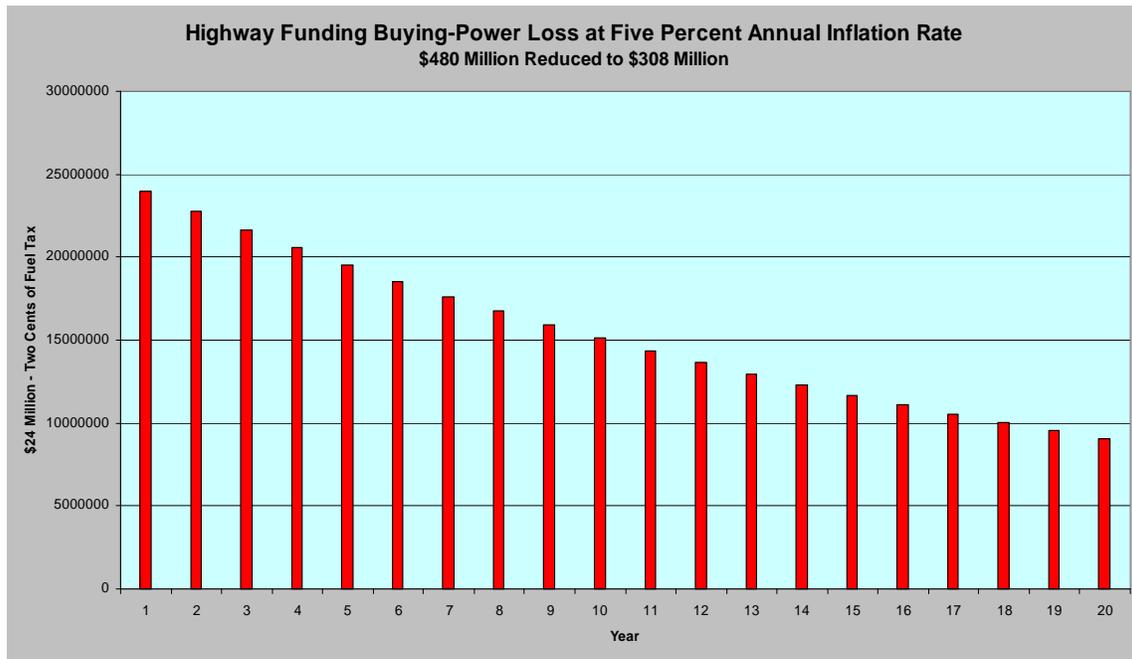
¹⁷⁹ Neb.Rev.Stat. § 39-2223

process. The cost included \$20 million in principal, \$12,448,250 in interest at an average rate of 5.926 percent, \$52,165 in issuance costs, and \$20,000 in agent fees. NDOR made the final payment and retired the debt on November 1, 1989.¹⁸⁰

One caveat to the issuance of bonds in Nebraska is that the director of NDOR is required to certify to the Department of Revenue a new and additional motor fuel excise tax rate, separate from the existing variable excise fuel tax rate, that would generate revenue at 125% of the annual principal and interest payment requirements.¹⁸¹ This provision effectively requires the raising of the fuel tax to pay for the debt service and principal of the issued bonds, unless an alternative revenue stream is designated.

The state would have to obtain the services of bond rating agents, legal services, lending institutions, and perform cash flow analysis/projections to determine the amount and timing of bond issuance and payment periods.

As shown by Figure 32, inflation can erode the purchasing power of highway revenue at a significant rate. Issuing bonds to accelerate completion of a particular highway project can reduce the impact of inflation. However, the interest rate and costs of bond issuance must be taken into account with the inflationary savings. Additionally, it can be difficult to predict future inflation.



Source: Omaha Chamber of Commerce

Figure 32

¹⁸⁰ *A Story of Highway Development In Nebraska*, by George E. Koster. Published by NDOR of Roads. pg. 77-79. Revised 1997.

¹⁸¹ Neb.Rev.Stat. § 66-4,144

State Infrastructure Bank

A state infrastructure bank is an institution that many states use to operate their highway bonding programs and the selection of bonded projects. Initially authorized by Congress in 1995, state infrastructure banks are in 32 states and Puerto Rico. Infrastructure banks around the country vary widely in size, with capital funds ranging from less than \$1 million to more than \$100 million. These banks offer several advantages to borrowers, including: the interest rate is set by the state, the state may be willing to take more risk than a commercial bank for a project with significant public benefits, and the state makes the loan more affordable by allowing for smaller annual payments.¹⁸²

A bill implementing an infrastructure bank in Nebraska was introduced in the 2009 legislative session. LB 401 would have authorized \$250 million bond issuance authority to be used for state and local transportation projects selected by a new council working in conjunction with NDOR.¹⁸³ The bill was not advanced to General File by the Transportation and Telecommunications Committee in 2009.

3.) Vehicle Miles Traveled Tax

The Vehicle Miles Traveled (VMT) Tax is a funding option that has received much publicity, but is not ready for nationwide adoption. The system would require all cars and trucks be equipped with global satellite positioning technology, a transponder, a clock and other equipment to record how many miles a vehicle was driven, whether it was driven on highways or secondary roads, and even whether it was driven during peak traffic periods or off-peak hours. The device would tally how much tax motorists owed depending upon their road use. Motorists would pay the amount owed at the pump.¹⁸⁴

Beginning in April 2006, the Oregon Department of Transportation launched a 12 month pilot program to test the technological and administrative feasibility of replacing the fuel tax with vehicle mileage tax based on miles driven in the state. The program included 285 volunteers, 299 motorists and two Portland service stations where the fee would be collected.¹⁸⁵

The mileage-based fee experiment used a GPS receiver to estimate miles driven in different zones. Mileage data was then transmitted wirelessly on a short-range radio frequency to receivers at the fuel stations. Participants were charged 1.2 cents per mile. In addition, some were charged premiums for traveling during peak periods to determine if such charges would impact travel behavior.

The study findings concluded that the concept of a VMT is viable, paying at the pump works, and the mileage fee can be phased in gradually alongside the fuel tax. The study

¹⁸² *Transportation & Infrastructure Finance*, A CSG National Report. Sean Slone. Chapter 6, State Infrastructure Banks, pg. 20.

¹⁸³ LB 401 Fiscal Note, prepared by Mike Lovelace. February 19, 2009.

¹⁸⁴ <http://www.msnbc.msn.com/id/29298315>, accessed February 20, 2009. *LaHood's Talk of Mileage Tax Nixed*, Associated Press. msnbc.com.

¹⁸⁵ *Oregon's Mileage Fee Concept and Road User Fee Pilot Program, Final Report*. James Whitty. Oregon Department of Transportation. Results Summary, pg. vi. November 2007.

also concluded that privacy can be protected based on engineering specifications, the system places minimal burdens on businesses, and the cost of implementation and administration is low.¹⁸⁶

Rob Atkinson, chairman of the National Surface Transportation Infrastructure Financing Commission, the blue-ribbon group that is developing future transportation funding options, estimated that moving to a national VMT would take about a decade.

Privacy concerns are based more on perception than any actual risk, Atkinson said. The satellite information would be beamed one way to the car and driving information would be contained within the device on the car, with the amount of the tax due the only information that's downloaded.¹⁸⁷

The University of Iowa Public Policy Center is currently conducting a \$16.5 million study for the U.S. Department of Transportation to determine whether VMT is a viable highway funding option. Researchers are conducting testing in Albuquerque, Billings, Chicago, Miami, Portland, and Wichita. The study will be completed in September 2010.¹⁸⁸

This funding option does not necessarily require advanced technology. A North Carolina 21st Century Transportation Committee recommended to the Legislature to add a one-quarter cent per mile to the state's 30.2 cents per gallon tax. The new fee would be paid through the annual vehicle registration process by certifying the odometer reading on a vehicle and calculating how many miles were driven for the year.¹⁸⁹ However, this alternative would seem no different to the taxpayer than increasing the registration fee.

There are certainly concerns with this funding approach, including privacy concerns and expensive and cost-prohibitive technology with 100 million cars on the road today. A pre-installation by auto makers would most likely be necessary.

This funding option will require leadership from the federal government, although not everyone is in agreement that this is the correct path to take. In February 2009 President Obama's Transportation Secretary Ray LaHood stated the administration was considering some form of a vehicle miles traveled tax to replace the federal fuel tax. Soon after, Press Secretary Robert Gibbs said a vehicle miles traveled tax "is not and will not be the policy of the Obama administration."¹⁹⁰ Representative James Oberstar, Chair of the House Transportation Committee, followed up in a speech to the American Association of State Highway and Transportation Officials that "whether they want it or not, they are going to get it."¹⁹¹

¹⁸⁶ *Oregon's Mileage Fee Concept and Road User Fee Pilot Program, Final Report*. James Whitty. Oregon Department of Transportation. Results Summary, pg. vi-vii. November 2007.

¹⁸⁷ *Id.*

¹⁸⁸ *Mileage Tax Is Taken For a Spin*, Associated Press. Omaha World-Herald. July 9, 2009.

¹⁸⁹ *Is An End To Fuel Tax In Sight?* The New York Times, reprinted in the Omaha World-Herald. April 19, 2009.

¹⁹⁰ *Officials Seek Way to Fill a Fuel Tax Gap*, by Steve Friess. New York Times. March 8, 2009.

¹⁹¹ *Mileage Tax Picks Up Speed*, by Rob Hotakainen. Lincoln Journal Star. March 9, 2009.

4.) Gambling Expansion

Gambling and gaming expansion is limited by the Nebraska Constitution. Currently the only games authorized include the state lottery and horserace wagering.¹⁹² Charitable gaming in the forms of bingo, pickle cards, lotteries and raffles, and keno are also authorized.¹⁹³

A constitutional amendment was introduced during the 2009 session that would have allocated gambling expansion revenue to roads. LR 6CA would have placed on the 2010 general election ballot a constitutional amendment to allow slot machines at racetracks. Forty percent of the revenue derived from the slot machines would have been directed to the Highway Trust Fund. The measure would raise approximately \$80 million a year for highways.¹⁹⁴ The bill was not advanced to General File during the session.

A dedication of gaming revenue to the Highway Trust Fund would deviate from the traditional policy of employing user fees to fund Nebraska's transportation system.

5.) Rest Stop Privatization

Across the United States, more than 1,200 full-service rest areas and 200 welcome centers exist on interstate highways.¹⁹⁵ Nebraska has 26 rest areas along Interstate 80.¹⁹⁶

The Federal-Aid Highway Act of 1956 prohibited private, commercial development on or within the interstate right of way 'on the grounds that highway users should not be subject to monopoly and so that highway-oriented business can engage in free competition.'¹⁹⁷ The thought was the prohibition would encourage commercial development along the Interstate and revitalize communities. Congress recognized that businesses at exits would find it difficult to compete with government-run businesses at rest areas located along the Interstate right-of-way.¹⁹⁸ It should be noted that one-quarter of rest stops had roadside commercial operations grandfathered into the law.¹⁹⁹

The federal law is the only obstacle in permitting states to privatize their rest stops and information centers. However, there is an effective coalition of fast-food chains, fuel stations and convenience stores known as the Partnership to Save Highway Communities arguing that rest-stop commercialization would jeopardize investments in franchises

¹⁹² Neb.Const. Art. III, Sec. 24.

¹⁹³ 2008 Annual Report, NE Dpt. of Revenue Charitable Gaming Division. pg. 1. January 2009.

¹⁹⁴ *Lawmaker Proposes Slots at Racetracks*, by Nancy Hicks. Lincoln Journal Star, January 14, 2009.

¹⁹⁵ *Final Report: Opportunities for the Privatization of Virginia's Rest Areas and Welcome Centers*, Alice W.M. Phillips & Michael A. Perfater. Chapter 4. Virginia Transportation Research Council. May 1991.

¹⁹⁶ Nebraska's Interstate 80 Rest Areas, NDOR. <http://www.dor.state.ne.us/docs/restareas.pdf>, (accessed December 1, 2009).

¹⁹⁷ *Final Report: Opportunities for the Privatization of Virginia's Rest Areas and Welcome Centers*, Alice W.M. Phillips & Michael A. Perfater. Chapter 5. Virginia Transportation Research Council.

¹⁹⁸ *Partnership to Save Highway Communities Condemns VDOT for Closing Rest Areas*, Reuters.com. July, 21, 2009.

¹⁹⁹ *Roadside Rebellion*, Josh Goodman. Governing. pg. 19, September 2009.

located off highway exits.²⁰⁰ Until federal law is amended, this will not be a viable highway funding option for Nebraska.

²⁰⁰ *Id.*

Conclusion

Increasing funding for Nebraska's highway system is not a question of needs versus wants. Nebraska's transportation system is vital to the state's future well-being. New construction must take place in order to meet the safety concerns in urban areas caused by congestion with increased traffic counts. Lane capacity must be added and it is just one reason for the many new construction projects that need to be done across the state.

Nebraska's agricultural economy and its reliance on the commercial transportation industry requires it to have a healthy and robust system. Historically the state has done an excellent job of funding its highways and roads through a steady pay-as-you-go user fee method. However, the traditional method is stressed for various reasons. If highway funding is not increased in the near future, the quality of the state's transportation system will most certainly suffer and deteriorate.

The Nebraska Department of Roads has adapted its mission and practices to the failing revenue stream by slowing the delivery of the construction program, adopting new highway criteria and standards, and shifting administrative and support resources to the construction program. Meanwhile high-dollar capital improvement projects continue to be delayed at the expense of the state's citizens in the form of increased congestion and higher future construction costs.

Through LR 152, the Transportation and Telecommunications Committee set out to find plausible alternatives or supplements to the current highway funding system. Thirty-one different credible ideas were presented to the Committee through its tour of the state at the 8 different public hearings. Some of these funding options are better suited for Nebraska's environment and makeup than others.

Almost all options will require some new fee, tax, or shift in existing resources to ensure that there is a sustainable and adequate Highway Trust Fund for the state and local governments' highways and streets.

Regardless of what funding option or options are undertaken, it will take a dedicated core of state senators and interested organizations to convince the public that increased revenues are not wanted, but required. Increases in highway funding must happen in order to preserve and improve not only Nebraska's roads, but Nebraska's future prosperity.

ONE HUNDRED FIRST LEGISLATURE
FIRST SESSION
LEGISLATIVE RESOLUTION 152

Introduced by Fischer, 43.

PURPOSE: To conduct a comprehensive examination of Nebraska's highway funding structure and to recommend possible alternatives to the traditional methods that have historically been employed in the state.

Highway funding has reached a crisis level in Nebraska. While revenue continues to decrease through less fuel consumption and less motor vehicle sales tax revenue, highway construction costs continue to increase through inflationary factors, global demand for resources, and greater needs due to increased traffic volume. The Department of Roads has gone from a \$390 million construction program in 2006 to a \$317 million construction program for the current fiscal year.

With an estimated \$286 million annual cost to preserve the state's current highway system, Nebraska is rapidly approaching the point where revenue will be insufficient to sustain the number one priority of system preservation. The \$286 million total does not include any expansion of the current system through capital construction.

This study shall examine several factors surrounding the state of highways in Nebraska, including, but not limited to:

- (1) An analysis of the current funding for highways and

streets in Nebraska and the emphasis on user fees;

(2) An analysis of the overall effectiveness of the fuel tax in today's economic environment;

(3) An analysis of how the Department of Roads has responded to lower revenue and higher costs over the past several years, including a reassessment of the priority funding system;

(4) An analysis of how local governments have fared under the state's highway revenue structure; and

(5) A review of other states' alternative methods of funding highways, including, but not limited to, bonding, implementing a vehicle miles traveled (VMT) system, tolling, using public-private partnerships, and redistributing current state revenue.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED FIRST LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Transportation and Telecommunications Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.

2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.

LR 152 Public Hearings Highway Funding Ideas

Fuel Tax

- 1.) Fuel Tax Increase
- 2.) Index the Fuel Tax to Inflation
- 3.) Index the Fuel Tax to Highway Maintenance/Construction

Registration Fees

- 4.) State Registration Fee Increase
- 5.) Motor Vehicle Tax Reformulation
- 6.) Motor Vehicle Tax Shift
- 7.) Base Motor Vehicle Fee
- 8.) Apportioned Vehicle Registration Rate Increase
- 9.) Electric Vehicle Fee
- 10.) Rescind Tax-Exempt Vehicle Status
- 11.) Recreational Vehicle Registration Increase

Local Governments

- 12.) Local Option Fuel Tax / Sales Tax
- 13.) LB 846 Reformulation to Local Governments
- 14.) Countywide Sales Tax / Wheel Tax
- 15.) Highway Allocation Dollars placed outside the county levy limit
- 16.) Increase the Local Match for federal funds

- 17.) Transportation Improvement Districts

Indirect Transportation Fees

- 18.) Driver License Fee Increase
- 19.) Tire Tax
- 20.) Train Tax Increase
- 21.) Car Rental Fee
- 22.) Lodging Tax Increase
- 23.) Increase Overweight Permits
- 24.) Eliminate statutory requirements of the HTF not related to highways.

New Fees

- 25.) Ethanol Tax
- 26.) Sales Tax on Food/Soda

Other States' Funding

- 27.) Toll Roads
- 28.) Bonding
- 29.) Vehicle Miles Traveled Tax
- 30.) Gambling Expansion
- 31.) Rest Stop Privatization

