

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 706

Introduced by Moser, 22; DeKay, 40; Dover, 19; Walz, 15.

Read first time January 18, 2023

Committee:

1 A BILL FOR AN ACT relating to highways; to amend sections 39-2205,
2 39-2209, 39-2211, 39-2212, 39-2213, 39-2216, 39-2222, 39-2223,
3 39-2703, and 39-2704, Reissue Revised Statutes of Nebraska, and
4 section 39-2224, Revised Statutes Cumulative Supplement, 2022; to
5 authorize issuance of highway bonds under the Nebraska Highway Bond
6 Act; to change provisions of the Build Nebraska Act; to harmonize
7 provisions; to repeal the original sections; and to declare an
8 emergency.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. The Legislature finds that safe and modern highway
2 infrastructure is of great importance to Nebraska's residents,
3 agricultural economy, business economy, and future economic growth.
4 Furthermore, the Legislature finds that it is in the interest of Nebraska
5 taxpayers to leverage historically low interest rates to offset the
6 challenges that construction inflation and uncertain federal highway
7 funding pose to adequately financing the state's infrastructure needs. It
8 is the intent of the Legislature to conservatively utilize bond financing
9 by issuing bonds, not to exceed four hundred fifty million dollars in
10 principal and thirty million dollars in annual debt service for a period
11 of not more than nineteen years, in order to accelerate completion of the
12 highway construction projects identified and to be identified for funding
13 under the Build Nebraska Act.

14 Sec. 2. Upon the recommendation of the Department of Transportation
15 and the commission, the commission acting for and on behalf of the state
16 may issue from time to time bonds under the Nebraska Highway Bond Act in
17 such principal amounts as determined by the commission for the purpose of
18 accelerating completion of the highway construction projects identified
19 and to be identified for funding under the Build Nebraska Act. The
20 principal amounts, interest rates, maturities, redemption provisions,
21 sale prices, and other terms of the bonds so authorized to be issued
22 shall be in accordance with terms or conditions established by the
23 commission. No bonds shall be issued after June 30, 2029, except for
24 refunding bonds issued in accordance with the Nebraska Highway Bond Act.
25 The proceeds from the sale of any bonds issued, net of costs of issuance,
26 capitalized interest, and necessary or appropriate reserve funds, shall
27 be deposited in the State Highway Capital Improvement Fund for use
28 pursuant to the Build Nebraska Act. The commission is hereby granted all
29 powers necessary or convenient to carry out the purposes and exercise the
30 powers granted by the Nebraska Highway Bond Act. Bonds shall be paid off
31 by June 30, 2042.

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

11 Sec. 4. Section 39-2205, Reissue Revised Statutes of Nebraska, is
12 amended to read:

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

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

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

9 Sec. 5. Section 39-2209, Reissue Revised Statutes of Nebraska, is
10 amended to read:

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

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

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

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

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

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

29 (6) The procedure by which the terms of any agreement with
30 bondholders may be amended or abrogated, the amount of bonds the holders
31 of which must consent thereto, and the manner in which such consent may

1 be given;

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

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

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

14 Sec. 6. Section 39-2211, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 39-2211 In addition to the powers conferred upon the commission to
17 secure the bonds in the Nebraska Highway Bond Act, the commission shall
18 have power in connection with the issuance of bonds to enter into such
19 agreements, consistent with the act and not in derogation or limitation
20 of the act, as it may deem necessary, convenient, or desirable concerning
21 the use or disposition of the money in the fund, the State Highway
22 Capital Improvement Fund, or the ~~or~~ bond fund including the pledging or
23 creation of any security interest in such money and the doing of or
24 refraining from doing any act which the commission would have the right
25 to do to secure the bonds in the absence of such agreements. The
26 commission shall have the power to enter into amendments of any such
27 agreements, consistent with the Nebraska Highway Bond Act and not in
28 derogation or limitation of the act, within the powers granted to the
29 commission by the act and to perform such agreements. The provisions of
30 any such agreements may be made a part of the contract with the holders
31 of the bonds.

1 Sec. 7. Section 39-2212, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 39-2212 Any pledge or security instrument made by the commission
4 shall be valid and binding from the time when the pledge or security
5 instrument is made. The money in the fund, the State Highway Capital
6 Improvement Fund, or the ~~or~~ bond fund so pledged and entrusted shall
7 immediately be subject to the lien of such pledge or security instrument
8 upon the deposit thereof in the fund without any physical delivery
9 thereof or further act. The lien of any such pledge or security
10 instrument shall be valid and binding as against all parties having
11 subsequently arising claims of any kind in tort, contract, or otherwise,
12 irrespective of whether such parties have notice thereof. Neither the
13 resolution nor any security instrument or other instrument by which a
14 pledge or other security is created need be recorded or filed and the
15 commission shall not be required to comply with any of the provisions of
16 the Uniform Commercial Code.

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

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

25 Sec. 9. Section 39-2216, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 39-2216 The Legislature hereby irrevocably pledges and agrees with
28 the holders of the bonds issued under the Nebraska Highway Bond Act that
29 so long as such bonds remain outstanding and unpaid it shall not repeal,
30 diminish, or apply to any other purposes the motor vehicle fuel taxes,
31 diesel fuel taxes, compressed fuel taxes, and alternative fuel fees

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

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

11 39-2222 Sections 39-2201 to 39-2226 and sections 1 to 3 of this act
12 shall be known and may be cited as the Nebraska Highway Bond Act.

13 Sec. 11. Section 39-2223, Reissue Revised Statutes of Nebraska, is
14 amended to read:

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

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

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

11 (3) Under the authority granted by Article XIII, section 1, of the
12 Constitution of Nebraska, the Legislature hereby authorizes after July 1,
13 2023, in addition to the authority granted in subsections (1) and (2) of
14 this section, the issuance of bonds in one or more series in an aggregate
15 principal amount to be determined by the commission, not to exceed four
16 hundred fifty million dollars. The outstanding principal amount of such
17 bonds may exceed such limit if and to the extent that the commission
18 determines that the issuance of advance refunding bonds under section
19 39-2226 in a principal amount greater than the bonds to be refunded would
20 reduce the aggregate bond principal and interest requirements payable
21 from the State Highway Capital Improvement Fund. The proceeds of such
22 issues shall be used exclusively for purposes of the Build Nebraska Act,
23 the Legislature expressly finding that the need for such construction and
24 reconstruction work and the vital importance of the highway system to the
25 welfare and safety of all Nebraskans requires such action. Such bonds
26 shall in all respects comply with the provisions of Article XIII, section
27 1, of the Constitution of Nebraska.

28 Sec. 12. Section 39-2224, Revised Statutes Cumulative Supplement,
29 2022, is amended to read:

30 39-2224 (1) The proceeds of the sale of bonds authorized by
31 subsection (1) of section 39-2223 are hereby appropriated to the Highway

1 Cash Fund of the Department of Transportation, for the biennium ending
2 June 30, 1977, for expenditure for the construction of highways.

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

9 (3) The proceeds of the sale of bonds authorized by subsection (3)
10 of section 39-2223 are hereby appropriated to the State Highway Capital
11 Improvement Fund of the Department of Transportation for use pursuant to
12 the Build Nebraska Act.

13 Sec. 13. Section 39-2703, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 39-2703 (1) The State Highway Capital Improvement Fund is created.
16 The fund shall consist of money credited to the fund pursuant to section
17 77-27,132, proceeds of bonds issued pursuant to subsection (3) of section
18 39-2223, and any other money as determined by the Legislature.

19 (2) The department may create or direct the creation of accounts
20 within the fund as the department determines to be appropriate and useful
21 in administering the fund.

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

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

29 39-2704 (1) The money credited to the fund pursuant to section
30 77-27,132 shall be used for repayment of bonds issued pursuant to
31 subsection (3) of section 39-2223. If any of the money credited to the

1 fund pursuant to section 77-27,132 remains after repayment of such bonds,
2 such money shall be used as follows:

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

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

11 (2) The proceeds of bonds issued pursuant to subsection (3) of
12 section 39-2223 which are credited to the fund shall be used as follows:

13 (a) At least seventy-five percent of the proceeds from such bonds
14 shall be used, as determined by the department, for construction of the
15 expressway system and federally designated high priority corridors; and

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

19 Sec. 15. Original sections 39-2205, 39-2209, 39-2211, 39-2212,
20 39-2213, 39-2216, 39-2222, 39-2223, 39-2703, and 39-2704, Reissue Revised
21 Statutes of Nebraska, and section 39-2224, Revised Statutes Cumulative
22 Supplement, 2022, are repealed.

23 Sec. 16. Since an emergency exists, this act takes effect when
24 passed and approved according to law.