

Enrolled House Bill 2750

Sponsored by Representative JOHNSON, Senator THOMSEN

CHAPTER

AN ACT

Relating to bridges; creating new provisions; and amending ORS 381.205, 381.265 and 381.824.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 4 of this 2017 Act are added to and made a part of ORS 381.205 to 381.305.

SECTION 2. (1) As used in this section and section 3 of this 2017 Act:

(a) “Bridge” means an existing bridge, or a completed bridge that results from a bridge project, and any related facilities.

(b) “Bridge project” means a project to construct, reconstruct or replace a bridge that spans the Columbia River, and any related facilities, that a private entity undertakes in accordance with:

(A) An agreement with the Port of Hood River that requires the private entity to fund, in whole or in part, the construction, reconstruction or replacement; and

(B) Rules that the port adopts in accordance with subsection (4)(b) of this section.

(c) “Bridge project activity” means an activity that a private entity undertakes in accordance with an agreement with the Port of Hood River to plan, acquire, finance, develop, design, construct, reconstruct, replace, improve, maintain, manage, repair, lease, operate or otherwise develop a bridge that spans the Columbia River to Washington State and any related facilities.

(d) “Related facilities” means real or personal property for:

(A) Operating, maintaining, renovating or facilitating the use of a bridge;

(B) Providing goods and services to people who use a bridge; or

(C) Generating revenue that can reduce tolls or that will be deposited in an account established under an agreement described in this section.

(2)(a) For the purposes set forth in paragraph (b) of this subsection and subject to the requirements of subsection (3) of this section, the Port of Hood River may enter into an agreement for a bridge project that is partially or completely within the port’s district.

(b) The purposes of entering into an agreement under paragraph (a) of this subsection are to:

(A) Develop an expedited project delivery process;

(B) Maximize innovation in project design, construction, delivery or financing; and

(C) Develop partnerships with private entities or units of government.

(3)(a) An agreement under subsection (2) of this section must, at a minimum, specify:

(A) At what point in the bridge project the public and private partners will assume responsibility for specific elements of the bridge project;

(B) How the public and private partners will share costs and risks of the bridge project;
(C) How the public and private partners will allocate financial responsibility for cost overruns;

(D) Incentives to perform and penalties for a failure to perform an element of the bridge project;

(E) Accounting and auditing standards for evaluating work on the bridge project; and

(F) Whether the bridge project is consistent with the plan that the Oregon Transportation Commission developed under ORS 184.618 and any applicable regional transportation plans or local transportation system programs and, if the bridge project is not consistent with the plans or programs, how and when the bridge project will become consistent with the plans and programs.

(b) In addition to the specifications set forth in paragraph (a) of this subsection, the agreement must:

(A) Establish an account into which proceeds from tolls, administrative fees and civil penalties from the bridge may be deposited;

(B) Provide that the public has dedicated and unrestricted use of the bridge for the duration of the bridge's functional life unless the port, a state government or the federal government declares an emergency that forbids using the bridge; and

(C) Provide that construction of the bridge project may not proceed until the Department of Transportation has issued, in accordance with ORS 374.305, any permits that are necessary to connect the bridge project to state highways.

(c) The port may include in an agreement under subsection (2) of this section any financing mechanisms, including but not limited to imposing and collecting franchise fees, user fees or tolls, and any other revenue sources the public and private partners may use.

(4)(a) ORS 279.835 to 279.855 and ORS chapters 279A, 279B and 279C do not apply to an agreement that the port enters into under subsection (2) of this section, or to bridge project activity undertaken in accordance with the agreement, except that if the bridge project activity is a public works, as defined in ORS 279C.800:

(A) ORS 279C.380, 279C.385 and 279C.390 and 279C.800 to 279C.870 apply to the bridge project activity; and

(B) Any agreement for constructing, reconstructing, performing a major renovation on or painting the bridge project must provide for paying workers under the agreement in accordance with ORS 279C.540 and 279C.800 to 279C.870.

(b) Before entering into an agreement under subsection (2) of this section, the port shall adopt rules that substantially conform with the rules that the Department of Transportation has adopted, as of the effective date of this 2017 Act, to implement the provisions of ORS 367.800 to 367.824.

(5) Sensitive business, commercial or financial information that a private entity provides to the port for the purpose of evaluating a proposal from the private entity for a bridge project is exempt from disclosure under ORS 192.410 to 192.505. The terms of a proposed or final agreement between the port and a private entity are subject to disclosure under ORS 192.410 to 192.505.

(6)(a) In evaluating proposals for a bridge project, in addition to considering a proposer's estimate of the cost for the bridge project, the port shall consider all of these elements:

(A) The qualities of the design that the proposer submits, if appropriate, including:

(i) The structural integrity of the design and how the design will likely affect future costs of maintaining the bridge;

(ii) The aesthetic qualities of the design and other aspects of the design such as the width of lane separators, landscaping and sound walls;

(iii) The traffic capacity of the design;

(iv) Aspects of the design that affect safety, such as lane width, the quality of lane markers and separators, the shape and positioning of ramps and curves and changes in elevation; and

(v) The ease with which traffic will pass through any toll collection facilities.

(B) The extent to which the bridge project will involve small businesses. The port shall encourage small businesses to participate in the bridge project to the maximum extent that the port determines is practicable. As used in this subparagraph:

(i) "Small business" means an independent business with fewer than 20 employees and with average annual gross receipts during the last three years of not more than \$1 million for construction firms and not more than \$300,000 for businesses that are not construction firms.

(ii) "Small business" does not include a subsidiary or parent company that belongs to a group of firms that the same individuals own or control and that have average aggregate annual gross receipts during the last three years in excess of \$1 million for construction firms or \$300,000 for firms that are not construction firms.

(C) The proposer's financial stability and ability to provide funding for the bridge project and obtain, or act as, a surety for the proposer's performance and financial obligations with respect to the bridge project.

(D) The experience of the proposer and the proposer's subcontractors in engaging in bridge project activities of a size and scope similar to the bridge project activity that the port proposes.

(E) The terms of the financial arrangement that the proposer accepts or proposes with respect to franchise fees, license fees, lease payments or operating expenses and the proposer's required rate of return from engaging in the bridge project activity.

(F) The terms that the proposer offers for engaging in the bridge project activity, including:

(i) The amount of proposed tolls and administrative fees;

(ii) Schedules for altering tolls and administrative fees; and

(iii) Any restrictions or conditions on future increases in tolls or administrative fees.

(b) After considering the elements described in paragraph (a) of this subsection in a public hearing, the port shall select a proposal that provides the best overall public value. In determining the best overall public value, the port must find that the selected proposal, compared to other proposals, is likely to:

(A) Reduce the cost of constructing the bridge project;

(B) Accelerate the schedule for completing the bridge project; and

(C) Reduce the financial risk to the port and the public.

(7) Notwithstanding any other provision of this section, the port may use any method to award a contract, agreement, franchise or license that is necessary to comply with the requirements of a grant or other funding source.

(8) Before entering into an agreement under subsection (2) of this section, the port shall engage legal counsel for the purpose of:

(a) Advising the port concerning the legality of specific proposed partnerships;

(b) Advising the port concerning legal procedures and practices that are related to implementing a bridge project in a public-private partnership;

(c) Assisting the port in negotiating agreements and preparing documents related to a public-private partnership;

(d) Advising the port concerning accounting, investment and tax requirements that apply to a bridge project the port undertakes in a public-private partnership; and

(e) Advising the port concerning any relevant federal securities or other laws and related disclosure requirements.

(9) For purposes of complying with applicable state and local land use laws, including statewide planning goals, comprehensive plans, land use regulations, ORS chapters 195, 196,

197, 198, 199, 215, 221, 222 and 227 and any requirement that the Land Conservation and Development Commission imposes, a bridge project is a project of the port and is not a project of any other person or entity.

(10) A bridge project undertaken under ORS 381.205 to 381.305 is:

(a) Exempt from ad valorem property taxation; and

(b) A state highway for the purposes of law enforcement and the application of the Oregon Vehicle Code.

(11) ORS 381.270, 381.275 and 381.280 do not apply to a bridge project that a private entity undertakes.

(12) ORS 381.270 does not apply to a bridge that the Port of Hood River constructs, re-constructs or replaces.

SECTION 3. (1) The Port of Hood River, or any private entity or unit of government that the port designates to operate a bridge in an agreement the port enters into under ORS 381.205 to 381.305, may establish, collect or alter a reasonable toll, administrative fee or civil penalty in connection with the bridge.

(2) The port or the private entity or unit of government that the port designates shall deposit any proceeds from a toll, administrative fee or civil penalty into an account established under an agreement described in section 2 of this 2017 Act. The port or unit of government shall deposit the share of proceeds that the port or unit of government receives with a depository that meets the requirements set forth in ORS chapter 295. A private entity shall deposit the share of proceeds that the private entity receives with an insured institution, as defined in ORS 706.008.

(3)(a) The Department of Transportation, on behalf of the port, shall:

(A) Assess and collect the amount of a toll that a person fails to pay, plus a civil penalty and administrative fee; and

(B) Refuse to renew the motor vehicle registration of the motor vehicle of a person that failed to pay a toll, a civil penalty or an administrative fee assessed under this subsection.

(b) For the purpose of conducting the activities described in paragraph (a) of this subsection, the department shall:

(A) Treat a toll established in connection with the bridge as a toll that was established under ORS 383.004;

(B) Apply the exemptions set forth in ORS 383.035 (3); and

(C) Adopt rules to establish a process by means of which the port, a private entity or a unit of government may request action from the department under this subsection.

SECTION 4. (1) The Port of Hood River may sell or otherwise transfer ownership of a bridge or bridge project that the port owns if, in an agreement for the sale or transfer, the port provides that:

(a) The sale or transfer is subject to an easement in favor of public use for the duration of the functional life of the bridge or bridge project;

(b) The port has a right of first refusal in any subsequent sale or transfer under which the seller must offer the port a price, terms and conditions that are the same as or better than the price, terms and conditions that the seller offers to any other prospective purchaser; and

(c) The state has a right of first refusal that the state may exercise if the port declines to purchase the bridge or bridge project under paragraph (b) of this subsection and under which the seller must offer the state a price, terms and conditions that are the same as or better than the price, terms and conditions that the seller offers to any other prospective purchaser.

(2) A right of first refusal described in subsection (1)(b) or (c) of this section does not apply to a sale or transfer of a bridge or bridge project to a subsidiary or affiliate of the seller.

SECTION 5. ORS 381.205 is amended to read:

381.205. Each county, city, town or port of this state adjoining or bordering on any interstate river or stream of water may:

(1) Construct, reconstruct, purchase, rent, lease or otherwise acquire, improve, operate and maintain bridges over any interstate river or stream of water to any adjoining state.

(2) **Subject to other provisions of law, acquire property and use revenues to connect bridges to roads, approaches and other transportation facilities within or outside the county's, city's, town's or port's boundaries.**

SECTION 6. ORS 381.265 is amended to read:

381.265. (1) Preparation of the specifications and designs of any bridge constructed under ORS 381.205 to 381.305 may give consideration to and include provisions for facilities and accommodations for traffic by rail as well as for traffic by motor vehicle, team, **bicycle**, pedestrian or other regular highway traffic.

(2) If provision is made for rail traffic, then the agencies under whose jurisdiction and control the bridge has been constructed may contract with any railroad companies for the use of the part of the bridge constructed to accommodate traffic by rail. The contract may be upon such terms and conditions as the interested parties may agree.

SECTION 7. ORS 381.824 is amended to read:

381.824. Every bridge that passes over a river or body of water forming a boundary between this state and another state, and that has been constructed or acquired and is being operated by the other state or by any county, city, **port** or other municipality of the other state, [*shall,*] together with its approaches, [*be*] **is** exempt from all property and other taxes in this state, if the other state exempts from all taxation every such interstate bridge, together with its approaches, constructed or acquired and operated by this state or by any county, city, **port** or other municipality of this state.

SECTION 8. Notwithstanding ORS 315.037, section 2 of this 2017 Act and the amendments to ORS 381.824 by section 7 of this 2017 Act apply to tax years beginning on or after January 1, 2018.

Passed by House April 20, 2017

Received by Governor:

Repassed by House July 6, 2017

.....M.,....., 2017

Approved:

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Timothy G. Sekerak, Chief Clerk of House

.....M.,....., 2017

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Tina Kotek, Speaker of House

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Kate Brown, Governor

Passed by Senate July 4, 2017

Filed in Office of Secretary of State:

.....M.,....., 2017

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Peter Courtney, President of Senate

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Dennis Richardson, Secretary of State