

SENATE AMENDMENTS TO B-ENGROSSED HOUSE BILL 2750

By COMMITTEE ON RULES

July 3

1 On page 1 of the printed B-engrossed bill, line 2, delete “, 381.824, 383.003,” and insert “and
2 381.824.”.

3 Delete line 3.

4 Delete lines 5 through 26 and delete pages 2 through 6 and insert:

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

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

8 **“(a) ‘Bridge’ means an existing bridge, or a completed bridge that results from a bridge
9 project, and any related facilities.**

10 **“(b) ‘Bridge project’ means a project to construct, reconstruct or replace a bridge that
11 spans the Columbia River, and any related facilities, that a private entity undertakes in ac-
12 cordance with:**

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

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

16 **“(c) ‘Bridge project activity’ means an activity that a private entity undertakes in ac-
17 cordance with an agreement with the Port of Hood River to plan, acquire, finance, develop,
18 design, construct, reconstruct, replace, improve, maintain, manage, repair, lease, operate or
19 otherwise develop a bridge that spans the Columbia River to Washington State and any re-
20 lated facilities.**

21 **“(d) ‘Related facilities’ means real or personal property for:**

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

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

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

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

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

31 **“(A) Develop an expedited project delivery process;**

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

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

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

35 **“(A) At what point in the bridge project the public and private partners will assume re-**

1 responsibility for specific elements of the bridge project;

2 “(B) How the public and private partners will share costs and risks of the bridge project;

3 “(C) How the public and private partners will allocate financial responsibility for cost
4 overruns;

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

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

8 “(F) Whether the bridge project is consistent with the plan that the Oregon Transporta-
9 tion Commission developed under ORS 184.618 and any applicable regional transportation
10 plans or local transportation system programs and, if the bridge project is not consistent
11 with the plans or programs, how and when the bridge project will become consistent with the
12 plans and programs.

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

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

17 “(B) Provide that the public has dedicated and unrestricted use of the bridge for the du-
18 ration of the bridge’s functional life unless the port, a state government or the federal gov-
19 ernment declares an emergency that forbids using the bridge; and

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

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

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

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

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

35 “(b) Before entering into an agreement under subsection (2) of this section, the port shall
36 adopt rules that substantially conform with the rules that the Department of Transportation
37 has adopted, as of the effective date of this 2017 Act, to implement the provisions of ORS
38 367.800 to 367.824.

39 “(5) Sensitive business, commercial or financial information that a private entity provides
40 to the port for the purpose of evaluating a proposal from the private entity for a bridge
41 project is exempt from disclosure under ORS 192.410 to 192.505. The terms of a proposed or
42 final agreement between the port and a private entity are subject to disclosure under ORS
43 192.410 to 192.505.

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

1 **“(A) The qualities of the design that the proposer submits, if appropriate, including:**
2 **“(i) The structural integrity of the design and how the design will likely affect future**
3 **costs of maintaining the bridge;**
4 **“(ii) The aesthetic qualities of the design and other aspects of the design such as the**
5 **width of lane separators, landscaping and sound walls;**
6 **“(iii) The traffic capacity of the design;**
7 **“(iv) Aspects of the design that affect safety, such as lane width, the quality of lane**
8 **markers and separators, the shape and positioning of ramps and curves and changes in ele-**
9 **vation; and**
10 **“(v) The ease with which traffic will pass through any toll collection facilities.**
11 **“(B) The extent to which the bridge project will involve small businesses. The port shall**
12 **encourage small businesses to participate in the bridge project to the maximum extent that**
13 **the port determines is practicable. As used in this subparagraph:**
14 **“(i) ‘Small business’ means an independent business with fewer than 20 employees and**
15 **with average annual gross receipts during the last three years of not more than \$1 million**
16 **for construction firms and not more than \$300,000 for businesses that are not construction**
17 **firms.**
18 **“(ii) ‘Small business’ does not include a subsidiary or parent company that belongs to a**
19 **group of firms that the same individuals own or control and that have average aggregate**
20 **annual gross receipts during the last three years in excess of \$1 million for construction**
21 **firms or \$300,000 for firms that are not construction firms.**
22 **“(C) The proposer’s financial stability and ability to provide funding for the bridge project**
23 **and obtain, or act as, a surety for the proposer’s performance and financial obligations with**
24 **respect to the bridge project.**
25 **“(D) The experience of the proposer and the proposer’s subcontractors in engaging in**
26 **bridge project activities of a size and scope similar to the bridge project activity that the port**
27 **proposes.**
28 **“(E) The terms of the financial arrangement that the proposer accepts or proposes with**
29 **respect to franchise fees, license fees, lease payments or operating expenses and the**
30 **proposer’s required rate of return from engaging in the bridge project activity.**
31 **“(F) The terms that the proposer offers for engaging in the bridge project activity, in-**
32 **cluding:**
33 **“(i) The amount of proposed tolls and administrative fees;**
34 **“(ii) Schedules for altering tolls and administrative fees; and**
35 **“(iii) Any restrictions or conditions on future increases in tolls or administrative fees.**
36 **“(b) After considering the elements described in paragraph (a) of this subsection in a**
37 **public hearing, the port shall select a proposal that provides the best overall public value.**
38 **In determining the best overall public value, the port must find that the selected proposal,**
39 **compared to other proposals, is likely to:**
40 **“(A) Reduce the cost of constructing the bridge project;**
41 **“(B) Accelerate the schedule for completing the bridge project; and**
42 **“(C) Reduce the financial risk to the port and the public.**
43 **“(7) Notwithstanding any other provision of this section, the port may use any method**
44 **to award a contract, agreement, franchise or license that is necessary to comply with the**
45 **requirements of a grant or other funding source.**

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

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

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

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

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

10 “(e) Advising the port concerning any relevant federal securities or other laws and re-
11 lated disclosure requirements.

12 “(9) For purposes of complying with applicable state and local land use laws, including
13 statewide planning goals, comprehensive plans, land use regulations, ORS chapters 195, 196,
14 197, 198, 199, 215, 221, 222 and 227 and any requirement that the Land Conservation and De-
15 velopment Commission imposes, a bridge project is a project of the port and is not a project
16 of any other person or entity.

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

18 “(a) Exempt from ad valorem property taxation; and

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

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

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

25 “SECTION 3. (1) The Port of Hood River, or any private entity or unit of government that
26 the port designates to operate a bridge in an agreement the port enters into under ORS
27 381.205 to 381.305, may establish, collect or alter a reasonable toll, administrative fee or civil
28 penalty in connection with the bridge.

29 “(2) The port or the private entity or unit of government that the port designates shall
30 deposit any proceeds from a toll, administrative fee or civil penalty into an account estab-
31 lished under an agreement described in section 2 of this 2017 Act. The port or unit of gov-
32 ernment shall deposit the share of proceeds that the port or unit of government receives
33 with a depository that meets the requirements set forth in ORS chapter 295. A private entity
34 shall deposit the share of proceeds that the private entity receives with an insured institu-
35 tion, as defined in ORS 706.008.

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

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

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

41 “(b) For the purpose of conducting the activities described in paragraph (a) of this sub-
42 section, the department shall:

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

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

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

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

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

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

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

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

20 “**SECTION 5.** ORS 381.205 is amended to read:

21 “381.205. Each county, city, town or port of this state adjoining or bordering on any interstate
22 river or stream of water may:

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

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

28 “**SECTION 6.** ORS 381.265 is amended to read:

29 “381.265. (1) Preparation of the specifications and designs of any bridge constructed under ORS
30 381.205 to 381.305 may give consideration to and include provisions for facilities and accommo-
31 dations for traffic by rail as well as for traffic by motor vehicle, team, **bicycle**, pedestrian or other
32 regular highway traffic.

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

37 “**SECTION 7.** ORS 381.824 is amended to read:

38 “381.824. Every bridge that passes over a river or body of water forming a boundary between
39 this state and another state, and that has been constructed or acquired and is being operated by the
40 other state or by any county, city, **port** or other municipality of the other state, [*shall*,] together
41 with its approaches, [*be*] **is** exempt from all property and other taxes in this state, if the other state
42 exempts from all taxation every such interstate bridge, together with its approaches, constructed
43 or acquired and operated by this state or by any county, city, **port** or other municipality of this
44 state.

45 “**SECTION 8. Notwithstanding ORS 315.037, section 2 of this 2017 Act and the amend-**

1 **ments to ORS 381.824 by section 7 of this 2017 Act apply to tax years beginning on or after**
2 **January 1, 2018.”**
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