Analysis of HB 2800

<u>Summary</u>

No additional money. HB 2800 provides no additional funds; the bonds issued under this act would be repaid by diverting state and federal funds that would otherwise go to planned road projects around the state.

No limit on borrowing. HB 2800 §3(1) appears to contain a $450 million "limit" on bond issuance, but has multiple exceptions that allow unlimited bond issuance—as long as the bonds are "intended to be repaid" or are "secured" with toll revenues.

The cost cap is meaningless. The cost cap is unenforceable. ODOT has routinely exceeded cost caps even when it had signed contracts for major projects.

The "triggers" for bond issuance in §3(4) of the bill are weak.

- Washington commitment is vague, unenforceable, tied only to matching funds for transit, and mentions no specific dollar amount.
- The requirement that an FFGA be "submitted" doesn't mean that Oregon will receive any federal funds, or receive the $850 million called for in the financial plan.
- The bill allows the Investment Grade Analysis to be unfinished ("ongoing") and doesn't require that it show that tolls will provide the $1.3 billion assumed in the CRC financial plan.
- There is <u>no</u> trigger that would require the receipt of the $400 in federal discretionary funds called for in the CRC finance plan.

ODOT can pledge nearly all state highway fund revenues and federal grant funds to CRC borrowing (Section 13).

No Legislative Review of Borrowing. ODOT is exempted from the requirement that its borrowing be approved biennially under the state bond budget law.

Evades Constitutional Limit on Gas Taxes for Transit. Section 4 enables ODOT to circumvent the constitutional restriction on spending gas tax funds on transit, by authorizing it to buy land and build highways in Washington State, which would enable it to trade financial liabilities with Washington, which could pay for transit.

Mandated Toll Reductions make environmental impacts worse. The bill Section 8(3) requires that tolls be reduced after bonds are repaid, which contradicts the assurances made in the project Environmental Impact Statement that tolls would be used to managed traffic for the life of the project. This invalidates the traffic analysis and environmental analysis of the project.

Conclusion: The net effect of these provisions is to allow ODOT to issue an unlimited amount of debt for the CRC, and take state highway funds and federal funds that would otherwise be used for other projects around the state, and use them instead to pay the principal and interest on bonds issued to pay for the CRC.

Detailed Analysis

Project Cost Cap: §3(3) supposedly caps cost at $3,413 million, but such a cap means nothing. If the bridge is unfinished and they've spent that full amount, does ODOT just walk away? But its $3,413 million "after the effective date of this act"--and they've already spent $160 million, so the real number is something closer to $3.6 billion. But the cap is simply window-dressing because they won't leave the project un-finished no matter how much it costs—as shown in the case of the US 20 Pioneer Mountain Eddyville project, where the state had a contract to finish the project for $150 million, but it is now going to end up costing close to $400 million.

Washington "Commitment". §3(4)(a) says bonds may not be issued until Washington has appropriated "or otherwise committed" sufficient funds to secure the full funding grant agreement (FFGA). Notice that the FFGA is just the *transit* portion of the project--so this doesn't require Washington to put in any more money than is required to do this transit portion. Washington could say: we'll use toll money to pay for the bridge, and put up $2.5 million per year to pay for LRT O&M, and contribute nothing for highway improvements. Also, it is very, very ambiguous as to what "otherwise committed" means: does Governor Inslee say he likes it? This section lacks a specific dollar amount. The CRC financial plan assumes that the federal government will provide $850 million for the transit portion of the project. If it provides less, Oregon and Washington will be liable to pay the difference. This is a problem for Oregon because none of the sources of financing identified for the project (i.e. tolls and proceeds of the state highway fund) may constitutionally be used to pay for transit costs. (Which is why it appears that the bill contains a provision that allows ODOT to evade this constitutional restriction by buying land and building highways in Washington State—see below).

Submit FFGA for review. §3(4)(b) says bonds may not be issued until the U.S. Department of Transportation has submitted a $800 million FFGA for congressional review. This is very ambiguous. USDOT submits an annual report to Congress on the projects that are in the New Starts pipeline. The CRC has appeared in this report for several years, and yes, it does show $850 million in funds "requested" for CRC. But this doesn't constitute approval of any money. A real trigger would be "the US DOT has signed an FFGA committing $800 million to CRC." Also, notice that this provision allows for at least a $50 million dollar shortfall from the $850 million that the CRC financial plan assumes will be provided. However, since this provision allows bond issues simply after US DOT "submits" the agreement to Congress, there is no assurance that the state will get any funding at all.

Allows unfinished Investment Grade Analysis. §3(4)(c) says bonds may not be issued the Treasurer has reviewed an approved an "ongoing" Investment Grade Analysis (IGA). This does not require that the IGA be finished, just be "ongoing." This provision is also completely ambiguous as to the total amount of borrowing to be undertaken, and the sources of funds to pay for the project. This is no limit at all. The bill makes no reference to the $1.3 billion that the CRC financial plan assumes will be provided by toll revenues. If tolling produces less than $1.3 billion, the shortfall will have to be made up from state funds. This section also purports to limit borrowing so that "additional revenues from borrowings in addition to those described in subsection (3) of this section are not necessary." But since subsection 3 describes an entire class of bonds that is exempt from the $450 million "limitation", this provision does not impose any effective limit on the total amount of borrowing. As noted elsewhere in this analysis, so long as bonds are "intended to be repaid" or are "secured", apparently even in part, by toll revenues, they are not subject to the $450 million cap.

No trigger tied to receiving federal discretionary funds. There is no provision tying issuance of bonds to the receipt of the $400 million in FHWA funds that CRC's financial plan says will come in earmarks or discretionary allocations. This means federal money will be diverted from other projects in Oregon.

Unlimited Bond Issuance. The other key provision is Section 12, which effectively allows unlimited bond issuance for the CRC. The provisions here conflict with--and effectively override--the supposed $450 million limit on borrowing in Section 3. As long as the bonds issued are to "intended" to be repaid with or are "secured by" toll revenues, the $450 million limit doesn't apply. The toll bonds or TIFIA loans will likely be general obligations of the state, and the state will be expected to pledge federal grants and its revenues to those bonds. Also, it appears that there would be no limit on the amount that CRC could borrow against future federal grants.

Exempts Bond Issuance from further legislative approvals. And Section 12 specifically waives the bond budget bill provisions for CRC (ORS 367.555), which is the legislature's specific authority to limit the actual dollar amount of bonds issues. The bond budget bill is an important safeguard which provides for regular legislative approval over debt issuance, and was enacted in the wake of the Veteran's Home Loan debacle of the 1970s.

Allows unlimited pledge of state highway funds and future federal funds. Section 13(1) authorizes the unlimited pledging of state highway funds (except for those allocated to cities and counties by formula) and any federal grants for which the CRC project is eligible (which includes nearly all of the federal money coming to ODOT). As long as bonds secured by these sources were also secured at least in part by a pledge of toll revenues—which is specifically provided for in this section—such bonds would not be subject to the $450 million "limit" set in Section 12.

Also, because this act provides no additional revenue for the State Highway Fund, the effect of this section is to reduce funds available for other highway projects in the state of Oregon by the amount of the principal and interest on such bonds that is not covered by tolls.

Enables ODOT to evade constitutional restriction on using gas tax funds for transit. Section 4 of the bill allows ODOT to buy land in Washington State, and designate roadways, approaches and other infrastructure in Washington as part of the Oregon Highway system. This would allow ODOT to spend Oregon gas tax funds in Washington. This would allow Oregon to trade money spent on Washington roads for Washington's contribution to the transit portion of the project—and thus evade the Oregon Constitutional restriction on spending gas tax money on transit projects.

Tolls Go Away After Bonds are Repaid. Section 8(3) essentially requires that tolls be reduced after bonds are repaid, so that only O&M and repair costs are covered. This is completely at odds with the representation of the project in the Final Environmental Impact Statement--and the so-called "Mobility Council"--which was to provide that tolls would be used for the life of the project to manage traffic demand. Eliminating tolls after the bonds are repaid produces dramatically different traffic and land use impacts than are represented and described in the FEIS. The continuing use of tolls to manage traffic demand is key project attribute behind Metro's claims that the CRC will not cause sprawl, longer trips and more CO2 emissions.