

House Bill 2260

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for Department of Transportation)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Declares that it is in state's interest to undertake Interstate 5 bridge replacement program. Enacts provisions relating to tolls for program. Specifies borrowing authority of Department of Transportation for program.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to Interstate 5 bridge replacement program; creating new provisions; amending ORS 381.005, 381.020, 383.003, 383.005, 383.009, 383.015 and 383.035; repealing ORS 381.075; and prescribing an effective date.

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

INTERSTATE 5 BRIDGE REPLACEMENT PROGRAM

SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS 381.005 to 381.075.

SECTION 2. The Legislative Assembly finds that it is in the interests of this state to undertake the Interstate 5 bridge replacement program, a bistate, multimodal corridor improvement program between the Washington State Route 500 interchange with Interstate 5 in Vancouver, Washington, and the Victory Boulevard interchange with Interstate 5 in Portland, Oregon. The program includes:

- (1) New multimodal river crossings;
- (2) Replacement, modification and removal of the existing Interstate 5 bridges; and
- (3) Multimodal improvements to facilitate travel in the bistate corridor.

SECTION 3. ORS 381.005 is amended to read:

381.005. (1) The Department of Transportation in the name of the state may construct, reconstruct, purchase, rent, lease or otherwise acquire, improve, operate and maintain bridges over the Columbia River *[to the State of Washington]*.

(2) Notwithstanding the designation of state highways within this state under ORS 366.005 and 366.220, the department may acquire real property necessary for the Interstate 5 bridge replacement program, together with approaches and connecting roads, on both sides of the Columbia River. For the purposes of the Interstate 5 bridge replacement program, the Oregon Transportation Commission by resolution may designate additional approaches, connecting roads and related facilities within the Interstate 5 corridor on both sides of the Columbia River as a part of the Oregon state highway system.

SECTION 4. ORS 381.020 is amended to read:

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 381.020. The Department of Transportation may *[pay out of state highway funds or]* **use moneys**
 2 **in the State Highway Fund, and** any other *[funds]* **moneys** available to *[it]* **the department, to**
 3 **pay** any part of the cost of the construction, purchase, **financing**, maintenance, operation, repair,
 4 reconstruction and improvement of *[any bridge mentioned in ORS 381.005]* **those bridges that are**
 5 assessed and allocated to this state. *[In the event the bridge is operated as a toll bridge, then the share*
 6 *of toll revenues accruing to this state shall be applied by the department to reimburse the state highway*
 7 *funds for expenditures made in connection with the bridge.]*

8 **SECTION 5. ORS 381.075 is repealed.**

9
 10 **TOLLS**

11
 12 **SECTION 6.** Section 7 of this 2013 Act is added to and made a part of ORS 383.005 to
 13 **383.075.**

14 **SECTION 7.** (1) The Legislative Assembly declares that the Interstate 5 bridge replace-
 15 ment program, as described in section 2 of this 2013 Act, is a bistate tollway project.

16 (2) The Oregon Transportation Commission may enter into agreements with the State
 17 of Washington, or with a toll authority designated by the State of Washington, relating to
 18 establishing, reviewing, adjusting and collecting tolls for the Interstate 5 bridge replacement
 19 program.

20 (3) The commission shall consider the factors listed in ORS 383.004 in considering tolls
 21 for the Interstate 5 bridge replacement program. Tolls for the program must be sufficient
 22 to:

23 (a) Meet debt service requirements for any debt issued to finance construction, develop-
 24 ment, equipping or improvement for the program, including any reserves required by bond
 25 or other contractual covenants;

26 (b) Pay for maintenance and operation of the program; and

27 (c) Fund any repair reserves, replacement reserves or other reserves that are required
 28 by bond covenants or other contractual covenants or that are otherwise determined by the
 29 Oregon Transportation Commission to be necessary in connection with the program.

30 (4) The portion of toll revenues attributable to Oregon from the Interstate 5 bridge re-
 31 placement program may be used only for the purposes described in Article IX, section 3a,
 32 of the Oregon Constitution. The toll revenues shall be used exclusively for the program, and
 33 may not be used for any other purpose, for so long as bonds issued to finance the program,
 34 including any refunding bonds, remain outstanding.

35 **SECTION 8.** ORS 383.003 is amended to read:

36 383.003. As used in ORS 383.003 to 383.075:

37 (1) "Department" means the Department of Transportation.

38 (2) "Electronic toll collection system" means a system that records use of a tollway by elec-
 39 tronic transmissions to or from the vehicle using the tollway and that collects tolls, or that is ca-
 40 pable of charging an account established by a person for use of the tollway.

41 (3) "Photo enforcement system" means a system of sensors installed to work in conjunction with
 42 an electronic toll collection system and other traffic control devices and that automatically produces
 43 videotape or one or more photographs, microphotographs or other recorded images of a vehicle in
 44 connection with the collection or enforcement of tolls.

45 (4) "Private entity" means any nongovernmental entity, including a corporation, partnership,

1 company or other legal entity, or any natural person.

2 (5) "Related facility" means any real or personal property that:

3 (a) Will be used to operate, maintain, renovate or facilitate the use of the tollway;

4 (b) Will provide goods or services to the users of the tollway; or

5 (c) Can be developed efficiently when tollways are developed and will generate revenue that
6 may be used to reduce tolls or will be deposited in the State Tollway Account.

7 (6) "Toll" means any fee or charge for the use of a tollway.

8 (7) "Toll booth collections" means the manual or mechanical collection of cash or charging of
9 an account at a toll plaza, toll booth or similar fixed toll collection facility.

10 (8) "Tollway" means any roadway, path, highway, bridge, tunnel, railroad track, bicycle path or
11 other paved surface or structure specifically designed as a land vehicle transportation route, the
12 construction, operation or maintenance of which is wholly or partially funded with toll revenues
13 resulting from an agreement under ORS 383.005.

14 (9) "Tollway operator" means the unit of government or the private entity that is responsible
15 for the construction, reconstruction, installation, improvement, **financing**, maintenance, repair and
16 operation of a tollway or a related facility.

17 (10) "Tollway project" means any capital project involving the acquisition of land for, or the
18 construction, reconstruction, improvement, installation, development or equipping of, a tollway, re-
19 lated facilities or any portion thereof.

20 (11) "Unit of government" means any department or agency of the federal government, any state,
21 *[or any agency, office or department thereof,]* **any department or agency of a state, any bistate**
22 **entity created by agreement under ORS 190.420 or other law for the purposes of the Inter-**
23 **state 5 bridge replacement program**, and any city, county, district, port or other public corpo-
24 ration organized and existing under statutory law or under a voter-approved charter.

25 **SECTION 9.** ORS 383.035 is amended to read:

26 383.035. (1) A person who fails to pay a toll, established pursuant to ORS 383.004, shall pay to
27 the Department of Transportation the amount of the toll, a civil penalty of not more than \$25 and
28 an administrative fee established by the tollway operator not to exceed the actual cost of collecting
29 the unpaid toll.

30 (2) In addition to any other penalty, the department *[of Transportation]* shall refuse to renew the
31 motor vehicle registration of the motor vehicle owned by a person who has not paid the toll, the
32 civil penalty and any administrative fee charged under this section.

33 (3) This section does not apply to:

34 (a) A person operating a vehicle owned by a unit of government or the tollway operator;

35 (b) A person who is a member of a category of persons exempted by the Oregon Transportation
36 Commission from paying a toll; or

37 (c) A person who is a member of a category of persons made eligible by the commission for
38 paying a reduced toll, to the extent of the reduction.

39 **(4) Subsection (1) of this section does not apply to a person who fails to pay a toll es-**
40 **tablished under section 7 of this 2013 Act.**

41 **(5)(a) Upon receiving a request from the State of Washington, or from a private entity**
42 **that has contracted with the State of Washington to collect tolls, the department shall pro-**
43 **vide information to identify registered owners of vehicles who fail to pay a toll established**
44 **under section 7 of this 2013 Act.**

45 **(b) If the State of Washington, or a private entity that has contracted with the State of**

1 Washington to collect tolls, gives notice to the department that a person has not paid a toll
 2 established under section 7 of this 2013 Act, or a civil penalty or administrative fee imposed
 3 by reason of failure to pay the toll, the department shall refuse to renew the Oregon motor
 4 vehicle registration of the motor vehicle operated by the person at the time of the violation.

5 (c) The department may renew an Oregon motor vehicle registration of a person de-
 6 scribed in paragraph (b) of this subsection upon receipt of a notice from the State of
 7 Washington or the private entity indicating that all tolls, civil penalties and other adminis-
 8 trative costs owed by the person have been paid.

9
 10 **BORROWING FOR THE INTERSTATE 5 BRIDGE REPLACEMENT PROGRAM**

11
 12 **SECTION 10.** The Department of Transportation may request the State Treasurer to is-
 13 sue short-term bonds as provided in ORS chapter 286A for the purpose of managing cash
 14 flows for the Interstate 5 bridge replacement program, which may include, but is not limited
 15 to, repaying moneys borrowed from any unit of government, as defined in ORS 383.003. ORS
 16 286A.035 does not apply to any short-term bonds issued under this section. Any bonds issued
 17 under this section shall be repaid from the proceeds of bonds or other moneys available to
 18 the department for the Interstate 5 bridge replacement program.

19 **SECTION 11.** (1) The Department of Transportation may request the State Treasurer to
 20 issue revenue bonds, general obligation bonds or a combination of revenue and general obli-
 21 gation bonds as provided in ORS chapter 286A for the purpose of financing the Interstate 5
 22 bridge replacement program. The provisions of ORS 367.555 and 367.560 do not apply to gen-
 23 eral obligation bonds issued under this section. The proceeds of bonds issued under this
 24 section may be deposited in a segregated account within the State Highway Fund or with a
 25 trustee as provided in ORS 286A.025. A unit of government, as defined in ORS 383.003, may
 26 be used as a trustee for bonds issued under the authority of this section. The proceeds of the
 27 bonds may be invested as provided in ORS 286A.025.

28 (2) The proceeds of bonds issued under this section may be used by the department, or
 29 loaned to a private entity or to a public body, for the purpose of:

- 30 (a) Financing any portion of the Interstate 5 bridge replacement program, including the
- 31 payment of costs of acquisition of interests in land;
- 32 (b) Providing a financial reserve required under any federal funding agreement;
- 33 (c) Paying costs of issuing bonds and funding bond reserves; and
- 34 (d) Reimbursing the State Tollway Account as provided in ORS 383.015 (4).

35 (3) Moneys attributable to the Interstate 5 bridge replacement program and deposited to,
 36 and accounted for as part of, the State Tollway Account established by ORS 383.009 may be
 37 held by a third party, including a unit of government as defined in ORS 383.003, as trustee
 38 or custodian of such moneys.

39 **SECTION 12.** (1) Except as provided in subsection (2) of this section, the following mon-
 40 eys may be pledged to payment of bonds issued under section 11 of this 2013 Act:

- 41 (a) Moneys attributable to tolls deposited in the State Tollway Account established under
- 42 ORS 383.009 or tolls collected and held by a third party for the State of Oregon.
- 43 (b) Moneys deposited in the State Highway Fund that are not otherwise pledged or dedi-
- 44 cated to other purposes.
- 45 (c) Moneys loaned, granted or otherwise provided by the United States Government that

1 **may legally be used to finance costs of the Interstate 5 bridge replacement program.**

2 **(2) The following moneys may not be pledged to payment of bonds issued under section**
3 **11 of this 2013 Act:**

4 **(a) Moneys appropriated to counties under ORS 366.762 to 366.768.**

5 **(b) Moneys appropriated to cities under ORS 366.785 to 366.820.**

6 **(c) Fees for the registration of campers, motor homes and travel trailers that are re-**
7 **quired to be paid into the State Parks and Recreation Department Fund under ORS 366.512.**

8 **SECTION 13.** ORS 383.005 is amended to read:

9 383.005. (1) For purposes of the acquisition, design, construction, reconstruction, operation or
10 maintenance and repair of tollway projects, the Department of Transportation may enter into any
11 combination of contracts, agreements and other arrangements with any one or more private entities
12 or units of government, or any combination thereof, including but not limited to the following:

13 (a) Design-build contracts with private entities pursuant to which a portion or all aspects of the
14 design, construction and installation of all or any portion of a tollway project are accomplished by
15 the private entity;

16 (b) Lease agreements, lease-purchase agreements and installment sale arrangements for the
17 lease, sale or purchase of real and personal property for tollway projects by the state from private
18 entities or units of government or by private entities or units of government from the state;

19 (c) Licenses, franchises or other agreements for the periodic or long-term operation or mainte-
20 nance of a tollway project;

21 (d) Financing agreements for a tollway project pursuant to which the department **borrow**
22 **from, or** makes any loan, grant, guaranty or other financing arrangement **to or** with, a private
23 entity or unit of government; and

24 (e) Agreements for purchase or acquisition of fee ownership, easements, rights of way or any
25 other interests in land upon which a tollway project is to be built.

26 (2) The department may operate tollway projects and impose and collect tolls on any tollway
27 project the department operates. Any private entity or unit of government that operates a tollway
28 project pursuant to an agreement with the department may impose and collect tolls on the tollway
29 project.

30 **SECTION 14.** ORS 383.009 is amended to read:

31 383.009. (1) There is hereby established the State Tollway Account as a separate account within
32 the State Highway Fund. The State Tollway Account shall consist of:

33 (a) All moneys and revenues received by the Department of Transportation from or made avail-
34 able by the federal government to the department for any tollway project or for the operation or
35 maintenance of any tollway;

36 (b) Any moneys received by the department (from any other unit of government or any private
37 entity for a tollway project or from the operation or maintenance of any tollway);

38 (c) All moneys and revenues received by the department from any loan made by the department
39 for a tollway project pursuant to ORS 383.005, and from any lease, agreement, franchise or license
40 for the right to the possession and use, operation or management of a tollway project;

41 (d) All tolls and other revenues received by the department from the users of any tollway
42 project;

43 (e) The proceeds of any bonds authorized to be issued [*under ORS 383.023*] for tollway projects;

44 (f) Any moneys that the department has legally transferred from the State Highway Fund to the
45 State Tollway Account for tollway projects;

1 (g) All moneys and revenues received by the department from all other sources that by donation,
 2 grant, contract or law are allocated or dedicated for tollway projects;

3 (h) All interest earnings on investments made from any of the moneys held in the State Tollway
 4 Account; and

5 (i) All civil penalties and administrative fees paid to the department from the enforcement of
 6 tolls.

7 (2) Moneys in the State Tollway Account may be used by the department for the following pur-
 8 poses:

9 (a) To finance preliminary studies and reports for any tollway project;

10 (b) To acquire land to be owned by the state for tollways and any related facilities therefor;

11 (c) To finance the construction, renovation, operation, improvement, maintenance or repair of
 12 any tollway project;

13 (d) To make grants or loans to a unit of government for tollway projects;

14 (e) To make loans to private entities for tollway projects;

15 (f) To pay the principal, interest and premium due with respect to, and to pay the costs con-
 16 nected with the issuance or ongoing administration of any bonds or other financial obligations au-
 17 thorized to be issued by, or the proceeds of which are received by, the department for any tollway
 18 project;

19 (g) To provide a guaranty or other security for any bonds or other financial obligations, in-
 20 cluding but not limited to financial obligations with respect to any bond insurance, surety or credit
 21 enhancement device issued or incurred by the department, a unit of government or a private entity,
 22 for the purpose of financing a single tollway project or any related group or system of tollways or
 23 related facilities; and

24 (h) To pay the costs incurred by the department in connection with its oversight, operation and
 25 administration of the State Tollway Account, the proposals and projects submitted under ORS
 26 383.015 and the tollway projects financed under ORS 383.005.

27 (3) For purposes of **paying or** securing bonds [*authorized by ORS 383.023*] or providing a guar-
 28 anty, surety or other security authorized by subsection (2)(g) of this section, the department may:

29 (a) Irrevocably pledge all or any portion of the amounts that are credited to, or are required to
 30 be credited to, the State Tollway Account;

31 (b) Establish subaccounts in the State Tollway Account, and make covenants regarding the
 32 credit to and use of amounts in those accounts and subaccounts; and

33 (c) Establish separate trust funds or accounts and make covenants to transfer to those separate
 34 trust funds or accounts all or any portion of the amounts that are required to be deposited in the
 35 State Tollway Account.

36 (4) Notwithstanding any other provision of ORS 383.001 to 383.075, the department shall not
 37 pledge any funds or amounts at any time held in the State Tollway Account as security for the ob-
 38 ligations of a private entity unless the department has entered into a binding and enforceable
 39 agreement that provides the department reasonable assurance that the department will be repaid,
 40 with appropriate interest, any amounts that the department is required to advance pursuant to that
 41 pledge.

42 (5) Moneys in the State Tollway Account are continuously appropriated to the department for
 43 purposes authorized by this section.

44 **SECTION 15.** ORS 383.015 is amended to read:

45 383.015. (1) Tollway projects may be initiated by the Department of Transportation, by a unit

1 of government having an interest in the installation of a tollway, or by a private entity interested
 2 in constructing or operating a tollway project. The department shall charge an administrative fee
 3 for reviewing and considering any tollway project proposed by a private entity, which the depart-
 4 ment shall establish by rule. All such administrative fees shall be deposited into the State Tollway
 5 Account.

6 (2) The department shall adopt rules pursuant to which it will consider authorization of a
 7 tollway project. The rules shall require consideration of:

8 (a) The opinions and interests of units of government encompassing or adjacent to the path of
 9 the proposed tollway project in having the tollway installed;

10 (b) The probable impact of the proposed tollway project on local environmental, aesthetic and
 11 economic conditions and on the economy of the state in general;

12 (c) The extent to which funding other than state funding is available for the proposed tollway
 13 project;

14 (d) The likelihood that the estimated use of the tollway project will provide sufficient revenues
 15 to independently finance the costs related to the construction and future maintenance, repair and
 16 reconstruction of the tollway project, including the repayment of any loans to be made from moneys
 17 in the State Tollway Account;

18 (e) With respect to tollway projects, any portion of which will be financed with state funds or
 19 department loans or grants:

20 (A) The relative importance of the proposed tollway project compared to other proposed
 21 tollways; and

22 (B) Traffic congestion and economic conditions in the communities that will be affected by
 23 competing tollway projects; and

24 (f) The effects of tollway implementation on community and local street traffic.

25 (3) Notwithstanding any other provision of ORS 383.001 to 383.075, no tollway project shall be
 26 authorized unless the department finds that either:

27 (a) Based on the department's estimate of present and future traffic patterns, the revenues gen-
 28 erated by the tollway project will be sufficient, after payment of all obligations incurred in con-
 29 nection with the acquisition, construction and operation of such tollway project, to ensure the
 30 continued maintenance, repair and reconstruction of the tollway project without the contribution
 31 of additional public funds; or

32 (b) The revenues generated by the tollway project will be at least sufficient to pay its opera-
 33 tional expenses and a portion of the costs of its construction, maintenance, repair and recon-
 34 struction, and the importance of the tollway project to the welfare or economy of the state is great
 35 enough to justify the use of public funding for a portion of its construction, maintenance, repair and
 36 reconstruction.

37 (4) If the department finds that a proposed tollway project qualifies for authorization under this
 38 section, the department may conduct or cause to be conducted any environmental, geological or
 39 other studies required by law as a condition of construction of the tollway project. The costs of
 40 completing the studies for any proposed tollway project may be paid [by] **from** moneys in the State
 41 Tollway Account[, *provided that any such payment shall constitute a loan against the proposed tollway*
 42 *project and shall be reimbursed to the State Tollway Account as a part of*] **that are reimbursed from**
 43 the permanent financing for the project.

44
 45 **CAPTIONS**

1 **SECTION 16.** The unit captions used in this 2013 Act are provided only for the conven-
2 ience of the reader and do not become part of the statutory law of this state or express any
3 legislative intent in the enactment of this 2013 Act.

4

5

EFFECTIVE DATE

6

7 **SECTION 17.** This 2013 Act takes effect on the 91st day after the date on which the 2013
8 regular session of the Seventy-seventh Legislative Assembly adjourns sine die.

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