



STATE OF WASHINGTON
DEPARTMENT OF REVENUE

RECEIVED
DEC 11 2013

December 9, 2013

Michael McElwee, Executive Director
Port of Hood River
1000 E. Port Marina Drive
Hood River, OR 97031

Notification of Excise Tax Audit

Excise Tax Audit – Hood River Bridge over the Columbia River

The Washington State Department of Revenue (Department) is requesting records from the Port of Hood River (Port) to determine any Business & Occupation, Public Utility, Sales, and Use taxes the Port owes for operating the Hood River Bridge in the State of Washington.

Included after the records request is an explanation of the when the Port became taxable under Chapter 82 of the Revised Code of Washington (RCW), also known as the Revenue Act.

To Schedule an Appointment

Please call me back by December 23, 2013 at the phone number listed below, between the hours of 8:00 AM and 3:00 PM to schedule the audit.

Direct Line: (360) 256-2106

Audit Period:

January 1, 2008 through September 30, 2013.

Records Requested

The following records will be reviewed for the audit period:

- Chart of Accounts for the operation of the bridge;
- Summary accounting records for the bridge such as general ledgers, profit & loss statements and balance sheets;
- Sales detail report for the bridge;
- Purchase invoices or paid bills for the bridge;
- Depreciation schedules and supporting asset invoices for the bridge.

Although most audits can be completed with the above records, additional documents may be requested.

Audit Division
8008 NE Fourth Plain Blvd., Ste 320 ♦ Vancouver, WA 98662-7251
PO Box 1648 ♦ Vancouver, WA 98668-1648



Electronic Records

Some businesses use accounting software to record day-to-day operations. If this is true for your business, please provide the available accounting records in electronic format (for example, on CD or tape).

Confidential Tax Information Authorization

If an outside accountant or other third party will represent you during the audit, please complete the enclosed Confidential Tax Information Authorization (CTIA) form.

The Department's Secure Messaging system (accessed through "My Account" at dor.wa.gov) is the only method of electronic mail that a Department employee is permitted to use with taxpayers, unless specific authorization is provided. On the enclosed CTIA form, complete the section titled "Send my confidential information by regular email or fax" to authorize the auditor to communicate with you and/or your representative through these methods.

Return the completed CTIA form using one of the return methods listed below.

How to Return the Authorization Form

Please return the above form(s) to me by:

E-mail: jony@dor.wa.gov
Fax: (360) 555-1111 (Include: "Attention: Jon Yrjanson")
Mail: Department of Revenue
Attention: Jon Yrjanson
PO Box 1648
Vancouver, WA 98668-1648

Background Information on Washington's Excise Taxes

The Hood River Bridge has been operating tax exempt in the state of Washington from laws enacted in the late 1940s. Both Washington and Oregon, by statute agreed to exempt the bridge from taxes normally levied by each state. The Washington statute is RCW 84.36.230, which states as follows:

Interstate bridges — Reciprocity.

Any bridge, including its approaches, over rivers or bodies of water forming interstate boundaries, which bridge has been constructed or acquired and is being operated by any foreign state bordering upon such common interstate boundary, or which has been constructed or acquired and is being operated by any county, city or other municipality of such foreign state, shall be exempt from all property and other taxes in the state of Washington, if the foreign state exempts from all taxation any bridge or bridges constructed or acquired and being operated by the state of Washington or any county, city or other municipality thereof.

[1961 c 15 § 84.36.230. Prior: 1949 c 224 § 1; Rem. Supp. 1949 § 11111-12.]

Oregon had a similar reciprocal statute as part of Oregon Revised Statutes (ORS) 381.820, which stated as follows:

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

The state of Washington has not taxed the activities of the Port's Hood River Bridge operations in the state because of Washington's statutory exemption quoted above.

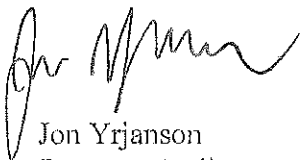
Recently the Department became aware that ORS 381.820 was legislatively repealed in 2007. The Oregon legislative repeal of ORS 381.820 (laws of 2007 c. 531, section 19) is attached for your review.

With the repeal of the Oregon statute, the Washington exemption is no longer valid since RCW 82.36.230 required the state of Oregon to have a reciprocal exemption. That reciprocal exemption was repealed in 2007 and became effective on January 1, 2008, which resulted in the Port's Hood River Bridge becoming subject to Washington's Revenue Act.

Questions

Please call me any time to discuss this request, the audit process, or other issues you may encounter with this request.

Sincerely,



Jon Yrjanson
Revenue Auditor

Phone: (360) 256-2106
Fax: (360) 256-2071
Email: jony@dor.wa.gov

Authorization for Confidential Tax Information

Page 2

Confidential tax information

Tax information is confidential and cannot be shared with anyone without express permission. By completing this form, you are authorizing the Department to share your confidential tax information with the person(s) you name. This request may cover all confidential tax information or it may be limited to certain information and/or periods of time. In section 2, please describe the specific information you want the Department to share and the periods covered by this authorization.

Secure messaging

Secure messaging is offered through the Department's online *My account* section. Taxpayers that have an online account can access secure messaging when logged in. Click on *Email & notices* in the left menu, then click on *Secure email*.

Taxpayers that don't have an online account can register at dor.wa.gov. To create an account, provide your name, email, and phone number; create a logon ID and password; then choose a security question.

If you want to add your business to your online account, enter your UBI/Tax registration number and your Pre-assigned Access Code (PAC). Your PAC can be found on the upper right corner of the letter you received from the Department when you first opened your business. It is also on mailed tax returns and at the bottom of balance due notices.

Only people authorized to access your online account can see secure messages.

ATTN: (If you are working with a Revenue employee)

If you are working with a Revenue employee, write the employee's name on the ATTN: line on the bottom of page 1 of this form and *return the form as instructed*.

Otherwise, send this form to:

Fax (360) 705-6733

Email communications@dor.wa.gov

Mail Dept. of Revenue
Taxpayer Services
PO Box 47478
Olympia, WA 98504-7478

Questions? Call the Department at 800-647-7706.





Confidential Tax Information Authorization

I authorize the Department of Revenue to share my confidential tax information as indicated. Use this form to authorize the Department of Revenue to share your confidential tax information with a third party. You can also use this form to authorize the Department to send confidential tax information using regular (unsecure) fax or email.

1. My information (This information will not be used to update your business record. *)

Taxpayer or business name _____
 Tax registration/UBI number _____ Phone _____
 Mailing address _____ City _____ ST _____ Zip _____
 Email _____ Fax _____

*To update your business record, go to <http://dor.wa.gov> and log in to your account.

2. Share my confidential tax information with the individual(s)/company listed below.

If you are not authorizing a third party, go to step 3. If you are authorizing an entire company or a Legislator's office, add the words "and staff." If authorizing specific people, add additional name(s) in the *Authorized names/email section*.

Individual or company name _____
 Mailing address _____ City _____ ST _____ Zip _____
 Phone _____ Fax _____ Email _____

Place an X in the appropriate box below:

- Any information for any time period.
- Any information for this time period _____ monthly/quarter and year to _____ monthly/quarter and year
- Only listed information for this time period _____ monthly/quarter and year to _____ monthly/quarter and year

Authorized names/email section

Information to be shared

3. Send my confidential tax information by regular email or fax.

I am aware of the Department's secure message system described on page 2. I know regular email and fax are not as secure, and confidential information may be intercepted by unauthorized persons. I accept these conditions and waive any violation of the Secrecy Clause resulting from use of unsecured email or fax. (RCW 82.32.330)

By checking this box, I authorize the Department to send my confidential tax information using regular email or fax.

4. My signature

I declare, under penalty of perjury, that I am authorized to sign this form. I am listed as the real property owner or as the business owner, partner, corporate officer, or LLC member or manager in official records held by Washington State, or I have attached documentation (e.g., power of attorney, annual report, executor) that grants me the authority to sign.

Taxpayer signature _____ Title _____ Date _____
 Print name _____ City and state where signed _____

This authorization remains in effect until revoked in writing by either party. Keep a copy for your files. To revoke this authorization, write "Revoke" across the front of this form and return it to the Department as indicated in step 5.

5. Fax to (360) 705-6733, email to communications@dor.wa.gov or mail to address on back.

For tax assistance or to request this document in an alternate format, visit <http://dor.wa.gov> or call 1-800-647-7706. Teletype (TTY) users may use the Washington Relay Service by calling 711.
 REV 27 0054 (1/29/13)

ATTN: Jon Yrjanon
 See instructions on page 2.

Chapter 531 Oregon Laws 2007

AN ACT

SB 1022

Relating to tolls; creating new provisions; amending ORS 267.200, 291.055, 367.806, 383.003, 383.009, 383.015 and 391.610; and repealing ORS 381.025, 381.030, 381.035, 381.040, 381.045, 381.065, 381.070, 381.086, 381.088, 381.090, 381.092, 381.094, 381.110, 381.805, 381.810, 381.815, 381.820, 382.105, 382.110, 382.115, 382.120, 382.125, 383.310, 383.315, 383.320, 383.330, 383.340, 383.350, 383.360, 383.370, 383.380, 383.385 and 383.386.

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

SECTION 1. Sections 2 and 4 to 11 of this 2007 Act are added to and made a part of ORS 383.003 to 383.027.

SECTION 2. (1) Except as provided in subsection (2) of this section, a toll may not be established unless the Oregon Transportation Commission has reviewed and approved the toll. The commission shall adopt rules specifying the process under which proposals to establish tolls will be reviewed. When reviewing a proposal to establish tolls, the commission shall take into consideration:

- (a) The amount and classification of the traffic using, or anticipated to use, the tollway;
- (b) The amount of the toll proposed to be established for each class or category of tollway user and, if applicable, the different amounts of the toll depending on time and day of use;
- (c) The extent of the tollway, including improvements necessary for tollway operation and improvements necessary to support the flow of traffic onto or off of the tollway;
- (d) The location of toll plazas or toll collection devices to collect the toll for the tollway;
- (e) The cost of constructing, reconstructing, improving, installing, maintaining, repairing and operating the tollway;
- (f) The amount of indebtedness incurred for the construction of the tollway and debt service requirements, if any;
- (g) The value of assets, equipment and services required for the operation of the tollway;
- (h) The period of time during which the toll will be in effect;
- (i) The process for altering the amount of the toll during the period of operation of the tollway;
- (j) The method of collecting the toll; and
- (k) The rate of return that would be fair and reasonable for a private equity holder, if any, in the tollway.

(2) Nothing in ORS 383.003 to 383.027 prohibits a city or county from establishing a toll on any highway, as defined in ORS 801.305, that the city or county has jurisdiction over as a road authority pursuant to ORS 810.010.

SECTION 3. ORS 383.003 is amended to read:
383.003. As used in ORS 383.003 to 383.027:

- (1) "Department" means the Department of Transportation.
- (2) "Electronic toll collection system" means a system that records use of a tollway by electronic transmissions to or from the vehicle using the tollway and that collects tolls, or that is capable of charging an account established by a person for use of the tollway.
- (3) "Photo enforcement system" means a system of sensors installed to work in conjunction with an electronic toll collection system and other traffic control devices and that automatically

produces videotape or one or more photographs, microphotographs or other recorded images of a vehicle in connection with the collection or enforcement of tolls.

[(2)] (4) "Private entity" means any nongovernmental entity, including a corporation, partnership, company or other legal entity, or any natural person.

[(3)] (5) "Related facility" means any real or personal property that:

- (a) Will be used to operate, maintain, renovate or facilitate the use of the tollway;
- (b) Will provide goods or services to the users of the tollway; or
- (c) Can be developed efficiently when tollways are developed and will generate revenue that may be used to reduce tolls or will be deposited in the State Tollway Account.

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

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

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

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

[(6)] (10) "Tollway project" means any capital project involving the acquisition of land for, or the construction, reconstruction, improvement, installation, development or equipping of, a tollway, related facilities or any portion thereof.

[(7)] (11) "Unit of government" means any department or agency of the federal government, any state, or any agency, office or department thereof, and any city, county, district, port or other public corporation organized and existing under statutory law or under a voter-approved charter.

SECTION 4. (1) A person who fails to pay a toll, established pursuant to section 2 of this 2007 Act, shall pay to the Department of Transportation the amount of the toll, a civil penalty of not more than \$25 and an administrative fee established by the tollway operator not to exceed the actual cost of collecting the unpaid toll.

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

(3) This section does not apply to:

- (a) A person operating a vehicle owned by a unit of government or the tollway operator;
- (b) A person who is a member of a category of persons exempted by the Oregon

Transportation Commission from paying a toll; or

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

NOTE: Section 5 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 6. A tollway operator may operate toll booth collections, an electronic toll collection system, a photo enforcement system or any combination of toll booth collections, an electronic toll collection system and a photo enforcement system.

SECTION 7. The Department of Transportation may provide to a tollway operator the information needed by the operator for toll booth collections or for the operation of an electronic toll collection system or a photo enforcement system.

SECTION 8. The Oregon Transportation Commission shall set standards by rule for electronic toll collection systems and photo enforcement systems used on tollways in this state to

ensure that systems used in Oregon and systems used in the State of Washington are compatible to the extent technology permits.

SECTION 9. The Oregon Transportation Commission shall establish a process by rule for the assessment of unpaid tolls and the collection of civil penalties and administrative fees under section 4 of this 2007 Act.

SECTION 10. (1) Except as provided in subsection (2) of this section, a recorded image of a vehicle and the registration plate of the vehicle produced by a photo enforcement system at the time the driver of the vehicle did not pay a toll shall be prima facie evidence that the registered owner of the vehicle is the driver of the vehicle.

(2) If the registered owner of a vehicle is a person in the vehicle rental or leasing business, the registered owner may elect to identify the person who was operating the vehicle at the time the toll was not paid or to pay the toll, civil penalty and administrative fee.

(3) A registered owner of a vehicle who pays the toll, civil penalty and administrative fee is entitled to recover the same from the driver, renter or lessee of the vehicle.

SECTION 11. (1) Except as provided in subsections (2) and (3) of this section, records and information used to collect and enforce tolls are exempt from disclosure under public records law and are to be used solely for toll collection and traffic management by the Department of Transportation.

(2) Information collected or maintained by an electronic toll collection system may not be disclosed to anyone except:

(a) The owner of an account that is charged for the use of a tollway;

(b) A financial institution, as necessary to collect tolls owed;

(c) Employees of the department;

(d) The tollway operator and authorized employees of the operator;

(e) A law enforcement officer who is acting in the officer's official capacity in connection with toll enforcement; and

(f) An administrative law judge or court in an action or proceeding in relation to unpaid tolls or administrative fees or civil penalties related to unpaid tolls.

(3) Information collected or maintained by a photo enforcement system may not be disclosed to anyone except:

(a) The registered owner or apparent driver of the vehicle;

(b) Employees of the department;

(c) The tollway operator and authorized employees of the operator;

(d) A law enforcement officer who is acting in the officer's official capacity in connection with toll enforcement; and

(e) An administrative law judge or court in an action or proceeding in relation to unpaid tolls or administrative fees or civil penalties related to unpaid tolls.

SECTION 12. ORS 383.009 is amended to read:

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

(a) All moneys and revenues received by the Department of Transportation from or made available by the federal government to the department for any tollway project or for the operation or maintenance of any tollway;

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

(c) All moneys and revenues received by the department from any loan made by the department for a tollway project pursuant to ORS 383.005, and from any lease, agreement, franchise or license for

the right to the possession and use, operation or management of a tollway project;

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

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

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

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

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

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

(2) Moneys in the State Tollway Account may be used by the department for the following purposes:

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

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

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

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

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

(f) To pay the principal, interest and premium due with respect to, and to pay the costs connected with the issuance or ongoing administration of any bonds or other financial obligations authorized to be issued by, or the proceeds of which are received by, the department for any tollway project;

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

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

(3) For purposes of securing bonds authorized by ORS 383.023 or providing a guaranty, surety or other security authorized by subsection (2)(g) of this section, the department may:

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

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

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

(4) Notwithstanding any other provision of ORS 383.001 to 383.027 [and 383.315], the department shall not pledge any funds or amounts at any time held in the State Tollway Account as security for the obligations of a private entity unless the department has entered into a binding and enforceable agreement that provides the department reasonable assurance that the department will be repaid, with appropriate interest, any amounts that the department is required to advance pursuant to that pledge.

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

SECTION 13. ORS 367.806 is amended to read:

367.806. (1) As part of the program established under ORS 367.804, the Department of Transportation may:

(a) Enter into any agreement or any configuration of agreements relating to transportation projects

with any private entity or unit of government or any configuration of private entities and units of government. The subject of agreements entered into under this section may include, but need not be limited to, planning, acquisition, financing, development, design, construction, reconstruction, replacement, improvement, maintenance, management, repair, leasing and operation of transportation projects.

(b) Include in any agreement entered into under this section any financing mechanisms, including but not limited to the imposition and collection of franchise fees or user fees and the development or use of other revenue sources.

(2) The agreements among the public and private sector partners entered into under this section must specify at least the following:

(a) At what point in the transportation project public and private sector partners will enter the project and which partners will assume responsibility for specific project elements;

(b) How the partners will share management of the risks of the project;

(c) How the partners will share the costs of development of the project;

(d) How the partners will allocate financial responsibility for cost overruns;

(e) The penalties for nonperformance;

(f) The incentives for performance;

(g) The accounting and auditing standards to be used to evaluate work on the project; and

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

(3) The department may, either separately or in combination with any other unit of government, enter into working agreements, coordination agreements or similar implementation agreements to carry out the joint implementation of any transportation project selected under ORS 367.804.

(4) **Except for ORS 383.015, 383.017 (1), (2), (3) and (5) and 383.019**, the provisions of ORS 383.003 to 383.027 *do not* apply to any tollway project entered into under ORS 367.800 to 367.824.

(5) The provisions of ORS 279.835 to 279.855 and ORS chapters 279A, 279B and 279C do not apply to concepts or proposals submitted under ORS 367.804, or to agreements entered into under this section, except that if public moneys are used to pay any costs of construction of public works that is part of a project, the provisions of ORS 279C.800 to 279C.870 apply to the public works. In addition, if public moneys are used to pay any costs of construction of public works that is part of a project, the construction contract for the public works must contain provisions that require the payment of workers under the contract in accordance with ORS 279C.540 and 279C.800 to 279C.870.

(6)(a) The department may not enter into an agreement under this section until the agreement is reviewed and approved by the Oregon Transportation Commission.

(b) The department may not enter into, and the commission may not approve, an agreement under this section for the construction of a public improvement as part of a transportation project unless the agreement provides for bonding, financial guarantees, deposits or the posting of other security to secure the payment of laborers, subcontractors and suppliers who perform work or provide materials as part of the project.

(c) Before presenting an agreement to the commission for approval under this subsection, the department must consider whether to implement procedures to promote competition among subcontractors for any subcontracts to be let in connection with the transportation project. As part of its request for approval of the agreement, the department shall report in writing to the commission its conclusions regarding the appropriateness of implementing such procedures.

(7)(a) Except as provided in paragraph (b) of this subsection, documents, communications and information developed, exchanged or compiled in the course of negotiating an agreement with a private entity under this section are exempt from disclosure under ORS 192.410 to 192.505.

(b) The documents, communications or information described in paragraph (a) of this subsection are subject to disclosure under ORS 192.410 to 192.505 when the documents, communications or

information are submitted to the commission in connection with its review and approval of a transportation project under subsection (6) of this section.

(8) The terms of a final agreement entered into under this section and the terms of a proposed agreement presented to the commission for review and approval under subsection (6) of this section are subject to disclosure under ORS 192.410 to 192.505.

(9) As used in this section:

(a) "Public improvement" has the meaning given that term in ORS 279A.010.

(b) "Public works" has the meaning given that term in ORS 279C.800.

SECTION 14. ORS 291.055 is amended to read:

291.055. (1) Notwithstanding any other law that grants to a state agency the authority to establish fees, all new state agency fees or fee increases adopted after July 1 of any odd-numbered year:

(a) Are not effective for agencies in the executive department of government unless approved in writing by the Director of the Oregon Department of Administrative Services;

(b) Are not effective for agencies in the judicial department of government unless approved in writing by the Chief Justice of the Supreme Court;

(c) Are not effective for agencies in the legislative department of government unless approved in writing by the President of the Senate and the Speaker of the House of Representatives;

(d) Shall be reported by the state agency to the Oregon Department of Administrative Services within 10 days of their adoption; and

(e) Are rescinded on July 1 of the next following odd-numbered year, or on adjournment sine die of the regular session of the Legislative Assembly meeting in that year, whichever is later, unless otherwise authorized by enabling legislation setting forth the approved fees.

(2) This section does not apply to:

(a) Any tuition or fees charged by the State Board of Higher Education and state institutions of higher education.

(b) Taxes or other payments made or collected from employers for unemployment insurance required by ORS chapter 657 or premium assessments required by ORS 656.612 and 656.614 or contributions and assessments calculated by cents per hour for workers' compensation coverage required by ORS 656.506.

(c) Fees or payments required for:

(A) Health care services provided by the Oregon Health and Science University, by the Oregon Veterans' Homes and by other state agencies and institutions pursuant to ORS 179.610 to 179.770.

(B) Assessments and premiums paid to the Oregon Medical Insurance Pool established by ORS 735.614 and 735.625.

(C) Copayments and premiums paid to the Oregon medical assistance program.

(D) Assessments paid to the Office of Private Health Partnerships under section 12, chapter 727, Oregon Laws 2005.

(d) Fees created or authorized by statute that have no established rate or amount but are calculated for each separate instance for each fee payer and the fee assessed is based on actual cost of services provided.

(e) State agency charges on employees for benefits and services.

(f) Any intergovernmental charges.

(g) Forest protection district assessment rates established by ORS 477.210 to 477.265 and the Oregon Forest Land Protection Fund fees established by ORS 477.760.

(h) State Department of Energy assessments required by ORS 469.421 (8) and 469.681.

(i) Any charges established by the State Parks and Recreation Director in accordance with ORS 565.080 (3).

(j) Assessments on premiums charged by the Insurance Division of the Department of Consumer and Business Services pursuant to ORS 731.804 or fees charged by the Division of Finance and Corporate Securities of the Department of Consumer and Business Services to banks, trusts and credit

unions pursuant to ORS 706.530 and 723.114.

(k) Public Utility Commission operating assessments required by ORS 756.310 or charges paid to the Residential Service Protection Fund required by chapter 290, Oregon Laws 1987.

(L) Fees charged by the Housing and Community Services Department for intellectual property pursuant to ORS 456.562.

(m) Tolls approved by the Oregon Transportation Commission pursuant to section 2 of this 2007 Act.

(3)(a) Fees temporarily decreased for competitive or promotional reasons or because of unexpected and temporary revenue surpluses may be restored to their normal level if, at the time the fee is decreased, the state agency specifies the following:

(A) The reason for the fee decrease; and

(B) The conditions under which the fee will be restored to its normal level.

(b) Fees that are decreased for reasons other than those described in paragraph (a) of this subsection may not be subsequently increased except as allowed by ORS 291.050 to 291.060 and 294.160.

SECTION 15. ORS 291.055, as amended by section 15, chapter 727, Oregon Laws 2005, and section 24e, chapter 744, Oregon Laws 2005, is amended to read:

291.055. (1) Notwithstanding any other law that grants to a state agency the authority to establish fees, all new state agency fees or fee increases adopted after July 1 of any odd-numbered year:

(a) Are not effective for agencies in the executive department of government unless approved in writing by the Director of the Oregon Department of Administrative Services;

(b) Are not effective for agencies in the judicial department of government unless approved in writing by the Chief Justice of the Supreme Court;

(c) Are not effective for agencies in the legislative department of government unless approved in writing by the President of the Senate and the Speaker of the House of Representatives;

(d) Shall be reported by the state agency to the Oregon Department of Administrative Services within 10 days of their adoption; and

(e) Are rescinded on July 1 of the next following odd-numbered year, or on adjournment sine die of the regular session of the Legislative Assembly meeting in that year, whichever is later, unless otherwise authorized by enabling legislation setting forth the approved fees.

(2) This section does not apply to:

(a) Any tuition or fees charged by the State Board of Higher Education and state institutions of higher education.

(b) Taxes or other payments made or collected from employers for unemployment insurance required by ORS chapter 657 or premium assessments required by ORS 656.612 and 656.614 or contributions and assessments calculated by cents per hour for workers' compensation coverage required by ORS 656.506.

(c) Fees or payments required for:

(A) Health care services provided by the Oregon Health and Science University, by the Oregon Veterans' Homes and by other state agencies and institutions pursuant to ORS 179.610 to 179.770.

(B) Assessments and premiums paid to the Oregon Medical Insurance Pool established by ORS 735.614 and 735.625.

(C) Copayments and premiums paid to the Oregon medical assistance program.

(d) Fees created or authorized by statute that have no established rate or amount but are calculated for each separate instance for each fee payer and the fee assessed is based on actual cost of services provided.

(e) State agency charges on employees for benefits and services.

(f) Any intergovernmental charges.

(g) Forest protection district assessment rates established by ORS 477.210 to 477.265 and the Oregon Forest Land Protection Fund fees established by ORS 477.760.

(h) State Department of Energy assessments required by ORS 469.421 (8) and 469.681.

(i) Any charges established by the State Parks and Recreation Director in accordance with ORS 565.080 (3).

(j) Assessments on premiums charged by the Insurance Division of the Department of Consumer and Business Services pursuant to ORS 731.804 or fees charged by the Division of Finance and Corporate Securities of the Department of Consumer and Business Services to banks, trusts and credit unions pursuant to ORS 706.530 and 723.114.

(k) Public Utility Commission operating assessments required by ORS 756.310 or charges paid to the Residential Service Protection Fund required by chapter 290, Oregon Laws 1987.

(L) Fees charged by the Housing and Community Services Department for intellectual property pursuant to ORS 456.562.

(m) Tolls approved by the Oregon Transportation Commission pursuant to section 2 of this 2007 Act.

(3)(a) Fees temporarily decreased for competitive or promotional reasons or because of unexpected and temporary revenue surpluses may be restored to their normal level if, at the time the fee is decreased, the state agency specifies the following:

(A) The reason for the fee decrease; and

(B) The conditions under which the fee will be restored to its normal level.

(b) Fees that are decreased for reasons other than those described in paragraph (a) of this subsection may not be subsequently increased except as allowed by ORS 291.050 to 291.060 and 294.160.

SECTION 16. ORS 267.200 is amended to read:

267.200. A mass transit district shall constitute a municipal corporation of this state, and a public body, corporate and politic, exercising public power. It shall be considered a unit of local government for the purposes of ORS 190.003 to 190.130, a public employer for the purposes of ORS 236.610 to 236.640, and a political subdivision for the purposes of ORS 305.620. A district and its contractors engaged in operating motor vehicles to provide mass transportation on behalf of the district shall be entitled to tax refunds as allowed under ORS 319.831 to incorporated cities. It shall have full power to carry out the objects of its formation and to that end may:

(1) Have and use a seal, have perpetual succession, and sue and be sued in its own name.

(2) Acquire by condemnation, purchase, lease, devise, gift or voluntary grant real and personal property or any interest therein, located inside the boundaries of the district and take, hold, possess and dispose of real and personal property purchased or leased from, or donated by, the United States, or any state, territory, county, city or other public body, nonprofit corporation or person for the purpose of providing or operating a mass transit system in the district and aiding in the objects of the district.

(3) Contract with the United States or with any county, city, state, or public body, or any of their departments or agencies, or a nonprofit corporation, or any person, for the construction, acquisition, purchase, lease, preservation, improvement, operation or maintenance of any mass transit system.

(4) Build, construct, purchase, lease, improve, operate and maintain, subject to other applicable provisions of law, all improvements, facilities or equipment necessary or desirable for the mass transit system of the district.

(5) Enter into contracts and employ agents, engineers, attorneys and other persons and fix their compensation.

(6) Fix and collect charges for the use of the transit system and other district facilities.

(7) Construct, acquire, maintain and operate and lease, rent and dispose of passenger terminal facilities, motor vehicle parking facilities and other facilities for the purpose of encouraging use of the mass transit system within the district.

(8) Enter into contracts or intergovernmental agreements under ORS chapter 190 with units of local government of the State of Oregon, whether within or without the district, or with the State of Washington or with public agencies of the State of Washington, to act jointly or in cooperation with

them or to provide mass transit services to areas under their jurisdictions, provided that the party contracting to receive the services shall pay to the mass transit district not less than the proportionate share of the cost of the services that the benefits to the contracting party bear to the total benefits from the service.

(9) Conduct programs and events and take other actions for the purpose of improving or maintaining employee relations.

(10) Improve, construct and maintain bridges over navigable streams. [*subject only to ORS 382.125.*]

(11) Do such other acts or things as may be necessary or convenient for the proper exercise of the powers granted to a district by ORS 267.010 to 267.390.

SECTION 17. ORS 383.015 is amended to read:

383.015. (1) Tollway projects may be initiated by the Department of Transportation, by a unit of government having an interest in the installation of a tollway, or by a private entity interested in constructing or operating a tollway project. The department shall charge an administrative fee for reviewing and considering any tollway project proposed by a private entity, which the department shall establish by rule. All such administrative fees shall be deposited into the State Tollway Account.

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

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

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

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

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

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

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

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

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

(3) Notwithstanding any other provision of ORS 383.001 to 383.027 [*and 383.315*], no tollway project shall be authorized unless the department finds that either:

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

(b) The revenues generated by the tollway project will be at least sufficient to pay its operational expenses and a portion of the costs of its construction, maintenance, repair and reconstruction, and the importance of the tollway project to the welfare or economy of the state is great enough to justify the use of public funding for a portion of its construction, maintenance, repair and reconstruction.

(4) If the department finds that a proposed tollway project qualifies for authorization under this section, the department may conduct or cause to be conducted any environmental, geological or other studies required by law as a condition of construction of the tollway project. The costs of completing the studies for any proposed tollway project may be paid by moneys in the State Tollway Account, provided

that any such payment shall constitute a loan against the proposed tollway project and shall be reimbursed to the State Tollway Account as a part of the permanent financing for the project.

SECTION 18. ORS 391.610 is amended to read:

391.610. All expenses of the Oregon Mass Transportation Financing Authority incurred in carrying out the provisions of ORS 267.227 and 391.500 to 391.660 shall be payable solely from funds provided under the authority of ORS 267.227 and 391.500 to 391.660. For the purposes of meeting the necessary expenses of initial organization and operation until such date as the authority derives moneys from funds provided hereunder, the authority shall be empowered to borrow moneys from districts, and districts are empowered to lend money to the authority as may be required and agreed for such necessary expenses of organization and operation. Expenses incurred by the authority in connection with any application by a district for financial assistance under ORS 267.227 and 391.500 to 391.660 [*shall be paid by such district as provided in ORS 267.200 (10), or, in the alternative and in the discretion of the authority,*] may be paid from the proceeds of bonds issued by the authority.

SECTION 19. ORS 381.025, 381.030, 381.035, 381.040, 381.045, 381.065, 381.070, 381.086, 381.088, 381.090, 381.092, 381.094, 381.110, 381.805, 381.810, 381.815, 381.820, 382.105, 382.110, 382.115, 382.120, 382.125, 383.310, 383.315, 383.320, 383.330, 383.340, 383.350, 383.360, 383.370, 383.380, 383.385 and 383.386 are repealed.

Approved by the Governor June 20, 2007

Filed in the office of Secretary of State June 21, 2007

Effective date January 1, 2008

**Enrolled
Senate Bill 1022**

Sponsored by COMMITTEE ON BUSINESS, TRANSPORTATION AND WORKFORCE DEVELOPMENT (at the request of Department of Transportation)

CHAPTER

AN ACT

Relating to tolls; creating new provisions; amending ORS 267.200, 291.055, 367.806, 383.003, 383.009, 383.015 and 391.610; and repealing ORS 381.025, 381.030, 381.035, 381.040, 381.045, 381.065, 381.070, 381.086, 381.088, 381.090, 381.092, 381.094, 381.110, 381.805, 381.810, 381.815, 381.820, 382.105, 382.110, 382.115, 382.120, 382.125, 383.310, 383.315, 383.320, 383.330, 383.340, 383.350, 383.360, 383.370, 383.380, 383.385 and 383.386.

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

SECTION 1. Sections 2 and 4 to 11 of this 2007 Act are added to and made a part of ORS 383.003 to 383.027.

SECTION 2. (1) Except as provided in subsection (2) of this section, a toll may not be established unless the Oregon Transportation Commission has reviewed and approved the toll. The commission shall adopt rules specifying the process under which proposals to establish tolls will be reviewed. When reviewing a proposal to establish tolls, the commission shall take into consideration:

- (a) The amount and classification of the traffic using, or anticipated to use, the tollway;
- (b) The amount of the toll proposed to be established for each class or category of tollway user and, if applicable, the different amounts of the toll depending on time and day of use;
- (c) The extent of the tollway, including improvements necessary for tollway operation and improvements necessary to support the flow of traffic onto or off of the tollway;
- (d) The location of toll plazas or toll collection devices to collect the toll for the tollway;
- (e) The cost of constructing, reconstructing, improving, installing, maintaining, repairing and operating the tollway;
- (f) The amount of indebtedness incurred for the construction of the tollway and debt service requirements, if any;
- (g) The value of assets, equipment and services required for the operation of the tollway;
- (h) The period of time during which the toll will be in effect;
- (i) The process for altering the amount of the toll during the period of operation of the tollway;
- (j) The method of collecting the toll; and
- (k) The rate of return that would be fair and reasonable for a private equity holder, if any, in the tollway.

(2) Nothing in ORS 383.003 to 383.027 prohibits a city or county from establishing a toll on any highway, as defined in ORS 801.305, that the city or county has jurisdiction over as a road authority pursuant to ORS 810.010.

SECTION 3. ORS 383.003 is amended to read:

383.003. As used in ORS 383.003 to 383.027:

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

(2) "Electronic toll collection system" means a system that records use of a tollway by electronic transmissions to or from the vehicle using the tollway and that collects tolls, or that is capable of charging an account established by a person for use of the tollway.

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

[(2)] (4) "Private entity" means any nongovernmental entity, including a corporation, partnership, company or other legal entity, or any natural person.

[(3)] (5) "Related facility" means any real or personal property that:

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

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

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

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

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

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

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

[(6)] (10) "Tollway project" means any capital project involving the acquisition of land for, or the construction, reconstruction, improvement, installation, development or equipping of, a tollway, related facilities or any portion thereof.

[(7)] (11) "Unit of government" means any department or agency of the federal government, any state, or any agency, office or department thereof, and any city, county, district, port or other public corporation organized and existing under statutory law or under a voter-approved charter.

SECTION 4. (1) A person who fails to pay a toll, established pursuant to section 2 of this 2007 Act, shall pay to the Department of Transportation the amount of the toll, a civil penalty of not more than \$25 and an administrative fee established by the tollway operator not to exceed the actual cost of collecting the unpaid toll.

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

(3) This section does not apply to:

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

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

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

NOTE: Section 5 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 6. A tollway operator may operate toll booth collections, an electronic toll collection system, a photo enforcement system or any combination of toll booth collections, an electronic toll collection system and a photo enforcement system.

SECTION 7. The Department of Transportation may provide to a tollway operator the information needed by the operator for toll booth collections or for the operation of an electronic toll collection system or a photo enforcement system.

SECTION 8. The Oregon Transportation Commission shall set standards by rule for electronic toll collection systems and photo enforcement systems used on tollways in this state to ensure that systems used in Oregon and systems used in the State of Washington are compatible to the extent technology permits.

SECTION 9. The Oregon Transportation Commission shall establish a process by rule for the assessment of unpaid tolls and the collection of civil penalties and administrative fees under section 4 of this 2007 Act.

SECTION 10. (1) Except as provided in subsection (2) of this section, a recorded image of a vehicle and the registration plate of the vehicle produced by a photo enforcement system at the time the driver of the vehicle did not pay a toll shall be prima facie evidence that the registered owner of the vehicle is the driver of the vehicle.

(2) If the registered owner of a vehicle is a person in the vehicle rental or leasing business, the registered owner may elect to identify the person who was operating the vehicle at the time the toll was not paid or to pay the toll, civil penalty and administrative fee.

(3) A registered owner of a vehicle who pays the toll, civil penalty and administrative fee is entitled to recover the same from the driver, renter or lessee of the vehicle.

SECTION 11. (1) Except as provided in subsections (2) and (3) of this section, records and information used to collect and enforce tolls are exempt from disclosure under public records law and are to be used solely for toll collection and traffic management by the Department of Transportation.

(2) Information collected or maintained by an electronic toll collection system may not be disclosed to anyone except:

- (a) The owner of an account that is charged for the use of a tollway;
- (b) A financial institution, as necessary to collect tolls owed;
- (c) Employees of the department;
- (d) The tollway operator and authorized employees of the operator;
- (e) A law enforcement officer who is acting in the officer's official capacity in connection with toll enforcement; and
- (f) An administrative law judge or court in an action or proceeding in relation to unpaid tolls or administrative fees or civil penalties related to unpaid tolls.

(3) Information collected or maintained by a photo enforcement system may not be disclosed to anyone except:

- (a) The registered owner or apparent driver of the vehicle;
- (b) Employees of the department;
- (c) The tollway operator and authorized employees of the operator;
- (d) A law enforcement officer who is acting in the officer's official capacity in connection with toll enforcement; and
- (e) An administrative law judge or court in an action or proceeding in relation to unpaid tolls or administrative fees or civil penalties related to unpaid tolls.

SECTION 12. ORS 383.009 is amended to read:

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

- (a) All moneys and revenues received by the Department of Transportation from or made available by the federal government to the department for any tollway project or for the operation or maintenance of any tollway;
- (b) Any moneys received by the department from any other unit of government or any private entity for a tollway project or from the operation or maintenance of any tollway;

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

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

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

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

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

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

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

(2) Moneys in the State Tollway Account may be used by the department for the following purposes:

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

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

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

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

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

(f) To pay the principal, interest and premium due with respect to, and to pay the costs connected with the issuance or ongoing administration of any bonds or other financial obligations authorized to be issued by, or the proceeds of which are received by, the department for any tollway project;

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

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

(3) For purposes of securing bonds authorized by ORS 383.023 or providing a guaranty, surety or other security authorized by subsection (2)(g) of this section, the department may:

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

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

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

(4) Notwithstanding any other provision of ORS 383.001 to 383.027 [and 383.315], the department shall not pledge any funds or amounts at any time held in the State Tollway Account as security for the obligations of a private entity unless the department has entered into a binding and enforceable agreement that provides the department reasonable assurance that the department will be repaid, with appropriate interest, any amounts that the department is required to advance pursuant to that pledge.

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

SECTION 13. ORS 367.806 is amended to read:

367.806. (1) As part of the program established under ORS 367.804, the Department of Transportation may:

(a) Enter into any agreement or any configuration of agreements relating to transportation projects with any private entity or unit of government or any configuration of private entities and units of government. The subject of agreements entered into under this section may include, but need not be limited to, planning, acquisition, financing, development, design, construction, reconstruction, replacement, improvement, maintenance, management, repair, leasing and operation of transportation projects.

(b) Include in any agreement entered into under this section any financing mechanisms, including but not limited to the imposition and collection of franchise fees or user fees and the development or use of other revenue sources.

(2) The agreements among the public and private sector partners entered into under this section must specify at least the following:

(a) At what point in the transportation project public and private sector partners will enter the project and which partners will assume responsibility for specific project elements;

(b) How the partners will share management of the risks of the project;

(c) How the partners will share the costs of development of the project;

(d) How the partners will allocate financial responsibility for cost overruns;

(e) The penalties for nonperformance;

(f) The incentives for performance;

(g) The accounting and auditing standards to be used to evaluate work on the project; and

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

(3) The department may, either separately or in combination with any other unit of government, enter into working agreements, coordination agreements or similar implementation agreements to carry out the joint implementation of any transportation project selected under ORS 367.804.

(4) **Except for ORS 383.015, 383.017 (1), (2), (3) and (5) and 383.019**, the provisions of ORS 383.003 to 383.027 [*do not*] apply to any tollway project entered into under ORS 367.800 to 367.824.

(5) The provisions of ORS 279.835 to 279.855 and ORS chapters 279A, 279B and 279C do not apply to concepts or proposals submitted under ORS 367.804, or to agreements entered into under this section, except that if public moneys are used to pay any costs of construction of public works that is part of a project, the provisions of ORS 279C.800 to 279C.870 apply to the public works. In addition, if public moneys are used to pay any costs of construction of public works that is part of a project, the construction contract for the public works must contain provisions that require the payment of workers under the contract in accordance with ORS 279C.540 and 279C.800 to 279C.870.

(6)(a) The department may not enter into an agreement under this section until the agreement is reviewed and approved by the Oregon Transportation Commission.

(b) The department may not enter into, and the commission may not approve, an agreement under this section for the construction of a public improvement as part of a transportation project unless the agreement provides for bonding, financial guarantees, deposits or the posting of other security to secure the payment of laborers, subcontractors and suppliers who perform work or provide materials as part of the project.

(c) Before presenting an agreement to the commission for approval under this subsection, the department must consider whether to implement procedures to promote competition among subcontractors for any subcontracts to be let in connection with the transportation project. As part of its request for approval of the agreement, the department shall report in writing to the commission its conclusions regarding the appropriateness of implementing such procedures.

(7)(a) Except as provided in paragraph (b) of this subsection, documents, communications and information developed, exchanged or compiled in the course of negotiating an agreement with a private entity under this section are exempt from disclosure under ORS 192.410 to 192.505.

(b) The documents, communications or information described in paragraph (a) of this subsection are subject to disclosure under ORS 192.410 to 192.505 when the documents, communications or information are submitted to the commission in connection with its review and approval of a transportation project under subsection (6) of this section.

(8) The terms of a final agreement entered into under this section and the terms of a proposed agreement presented to the commission for review and approval under subsection (6) of this section are subject to disclosure under ORS 192.410 to 192.505.

(9) As used in this section:

(a) "Public improvement" has the meaning given that term in ORS 279A.010.

(b) "Public works" has the meaning given that term in ORS 279C.800.

SECTION 14. ORS 291.055 is amended to read:

291.055. (1) Notwithstanding any other law that grants to a state agency the authority to establish fees, all new state agency fees or fee increases adopted after July 1 of any odd-numbered year:

(a) Are not effective for agencies in the executive department of government unless approved in writing by the Director of the Oregon Department of Administrative Services;

(b) Are not effective for agencies in the judicial department of government unless approved in writing by the Chief Justice of the Supreme Court;

(c) Are not effective for agencies in the legislative department of government unless approved in writing by the President of the Senate and the Speaker of the House of Representatives;

(d) Shall be reported by the state agency to the Oregon Department of Administrative Services within 10 days of their adoption; and

(e) Are rescinded on July 1 of the next following odd-numbered year, or on adjournment sine die of the regular session of the Legislative Assembly meeting in that year, whichever is later, unless otherwise authorized by enabling legislation setting forth the approved fees.

(2) This section does not apply to:

(a) Any tuition or fees charged by the State Board of Higher Education and state institutions of higher education.

(b) Taxes or other payments made or collected from employers for unemployment insurance required by ORS chapter 657 or premium assessments required by ORS 656.612 and 656.614 or contributions and assessments calculated by cents per hour for workers' compensation coverage required by ORS 656.506.

(c) Fees or payments required for:

(A) Health care services provided by the Oregon Health and Science University, by the Oregon Veterans' Homes and by other state agencies and institutions pursuant to ORS 179.610 to 179.770.

(B) Assessments and premiums paid to the Oregon Medical Insurance Pool established by ORS 735.614 and 735.625.

(C) Copayments and premiums paid to the Oregon medical assistance program.

(D) Assessments paid to the Office of Private Health Partnerships under section 12, chapter 727, Oregon Laws 2005.

(d) Fees created or authorized by statute that have no established rate or amount but are calculated for each separate instance for each fee payer and the fee assessed is based on actual cost of services provided.

(e) State agency charges on employees for benefits and services.

(f) Any intergovernmental charges.

(g) Forest protection district assessment rates established by ORS 477.210 to 477.265 and the Oregon Forest Land Protection Fund fees established by ORS 477.760.

(h) State Department of Energy assessments required by ORS 469.421 (8) and 469.681.

(i) Any charges established by the State Parks and Recreation Director in accordance with ORS 565.080 (3).

(j) Assessments on premiums charged by the Insurance Division of the Department of Consumer and Business Services pursuant to ORS 731.804 or fees charged by the Division of Finance and

Corporate Securities of the Department of Consumer and Business Services to banks, trusts and credit unions pursuant to ORS 706.530 and 723.114.

(k) Public Utility Commission operating assessments required by ORS 756.310 or charges paid to the Residential Service Protection Fund required by chapter 290, Oregon Laws 1987.

(L) Fees charged by the Housing and Community Services Department for intellectual property pursuant to ORS 456.562.

(m) Tolls approved by the Oregon Transportation Commission pursuant to section 2 of this 2007 Act.

(3)(a) Fees temporarily decreased for competitive or promotional reasons or because of unexpected and temporary revenue surpluses may be restored to their normal level if, at the time the fee is decreased, the state agency specifies the following:

(A) The reason for the fee decrease; and

(B) The conditions under which the fee will be restored to its normal level.

(b) Fees that are decreased for reasons other than those described in paragraph (a) of this subsection may not be subsequently increased except as allowed by ORS 291.050 to 291.060 and 294.160.

SECTION 15. ORS 291.055, as amended by section 15, chapter 727, Oregon Laws 2005, and section 24e, chapter 744, Oregon Laws 2005, is amended to read:

291.055. (1) Notwithstanding any other law that grants to a state agency the authority to establish fees, all new state agency fees or fee increases adopted after July 1 of any odd-numbered year:

(a) Are not effective for agencies in the executive department of government unless approved in writing by the Director of the Oregon Department of Administrative Services;

(b) Are not effective for agencies in the judicial department of government unless approved in writing by the Chief Justice of the Supreme Court;

(c) Are not effective for agencies in the legislative department of government unless approved in writing by the President of the Senate and the Speaker of the House of Representatives;

(d) Shall be reported by the state agency to the Oregon Department of Administrative Services within 10 days of their adoption; and

(e) Are rescinded on July 1 of the next following odd-numbered year, or on adjournment sine die of the regular session of the Legislative Assembly meeting in that year, whichever is later, unless otherwise authorized by enabling legislation setting forth the approved fees.

(2) This section does not apply to:

(a) Any tuition or fees charged by the State Board of Higher Education and state institutions of higher education.

(b) Taxes or other payments made or collected from employers for unemployment insurance required by ORS chapter 657 or premium assessments required by ORS 656.612 and 656.614 or contributions and assessments calculated by cents per hour for workers' compensation coverage required by ORS 656.506.

(c) Fees or payments required for:

(A) Health care services provided by the Oregon Health and Science University, by the Oregon Veterans' Homes and by other state agencies and institutions pursuant to ORS 179.610 to 179.770.

(B) Assessments and premiums paid to the Oregon Medical Insurance Pool established by ORS 735.614 and 735.625.

(C) Copayments and premiums paid to the Oregon medical assistance program.

(d) Fees created or authorized by statute that have no established rate or amount but are calculated for each separate instance for each fee payer and the fee assessed is based on actual cost of services provided.

(e) State agency charges on employees for benefits and services.

(f) Any intergovernmental charges.

(g) Forest protection district assessment rates established by ORS 477.210 to 477.265 and the Oregon Forest Land Protection Fund fees established by ORS 477.760.

(h) State Department of Energy assessments required by ORS 469.421 (8) and 469.681.

(i) Any charges established by the State Parks and Recreation Director in accordance with ORS 565.080 (3).

(j) Assessments on premiums charged by the Insurance Division of the Department of Consumer and Business Services pursuant to ORS 731.804 or fees charged by the Division of Finance and Corporate Securities of the Department of Consumer and Business Services to banks, trusts and credit unions pursuant to ORS 706.530 and 723.114.

(k) Public Utility Commission operating assessments required by ORS 756.310 or charges paid to the Residential Service Protection Fund required by chapter 290, Oregon Laws 1987.

(L) Fees charged by the Housing and Community Services Department for intellectual property pursuant to ORS 456.562.

(m) Tolls approved by the Oregon Transportation Commission pursuant to section 2 of this 2007 Act.

(3)(a) Fees temporarily decreased for competitive or promotional reasons or because of unexpected and temporary revenue surpluses may be restored to their normal level if, at the time the fee is decreased, the state agency specifies the following:

(A) The reason for the fee decrease; and

(B) The conditions under which the fee will be restored to its normal level.

(b) Fees that are decreased for reasons other than those described in paragraph (a) of this subsection may not be subsequently increased except as allowed by ORS 291.050 to 291.060 and 294.160.

SECTION 16. ORS 267.200 is amended to read:

267.200. A mass transit district shall constitute a municipal corporation of this state, and a public body, corporate and politic, exercising public power. It shall be considered a unit of local government for the purposes of ORS 190.003 to 190.130, a public employer for the purposes of ORS 236.610 to 236.640, and a political subdivision for the purposes of ORS 305.620. A district and its contractors engaged in operating motor vehicles to provide mass transportation on behalf of the district shall be entitled to tax refunds as allowed under ORS 319.831 to incorporated cities. It shall have full power to carry out the objects of its formation and to that end may:

(1) Have and use a seal, have perpetual succession, and sue and be sued in its own name.

(2) Acquire by condemnation, purchase, lease, devise, gift or voluntary grant real and personal property or any interest therein, located inside the boundaries of the district and take, hold, possess and dispose of real and personal property purchased or leased from, or donated by, the United States, or any state, territory, county, city or other public body, nonprofit corporation or person for the purpose of providing or operating a mass transit system in the district and aiding in the objects of the district.

(3) Contract with the United States or with any county, city, state, or public body, or any of their departments or agencies, or a nonprofit corporation, or any person, for the construction, acquisition, purchase, lease, preservation, improvement, operation or maintenance of any mass transit system.

(4) Build, construct, purchase, lease, improve, operate and maintain, subject to other applicable provisions of law, all improvements, facilities or equipment necessary or desirable for the mass transit system of the district.

(5) Enter into contracts and employ agents, engineers, attorneys and other persons and fix their compensation.

(6) Fix and collect charges for the use of the transit system and other district facilities.

(7) Construct, acquire, maintain and operate and lease, rent and dispose of passenger terminal facilities, motor vehicle parking facilities and other facilities for the purpose of encouraging use of the mass transit system within the district.

(8) Enter into contracts or intergovernmental agreements under ORS chapter 190 with units of local government of the State of Oregon, whether within or without the district, or with the State of Washington or with public agencies of the State of Washington, to act jointly or in cooperation with them or to provide mass transit services to areas under their jurisdictions, provided that the party contracting to receive the services shall pay to the mass transit district not less than the

proportionate share of the cost of the services that the benefits to the contracting party bear to the total benefits from the service.

(9) Conduct programs and events and take other actions for the purpose of improving or maintaining employee relations.

(10) Improve, construct and maintain bridges over navigable streams. [*subject only to ORS 382.125.*]

(11) Do such other acts or things as may be necessary or convenient for the proper exercise of the powers granted to a district by ORS 267.010 to 267.390.

SECTION 17. ORS 383.015 is amended to read:

383.015. (1) Tollway projects may be initiated by the Department of Transportation, by a unit of government having an interest in the installation of a tollway, or by a private entity interested in constructing or operating a tollway project. The department shall charge an administrative fee for reviewing and considering any tollway project proposed by a private entity, which the department shall establish by rule. All such administrative fees shall be deposited into the State Tollway Account.

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

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

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

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

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

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

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

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

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

(3) Notwithstanding any other provision of ORS 383.001 to 383.027 [*and 383.315*], no tollway project shall be authorized unless the department finds that either:

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

(b) The revenues generated by the tollway project will be at least sufficient to pay its operational expenses and a portion of the costs of its construction, maintenance, repair and reconstruction, and the importance of the tollway project to the welfare or economy of the state is great enough to justify the use of public funding for a portion of its construction, maintenance, repair and reconstruction.

(4) If the department finds that a proposed tollway project qualifies for authorization under this section, the department may conduct or cause to be conducted any environmental, geological or other studies required by law as a condition of construction of the tollway project. The costs of completing the studies for any proposed tollway project may be paid by moneys in the State Tollway Account, provided that any such payment shall constitute a loan against the proposed tollway

project and shall be reimbursed to the State Tollway Account as a part of the permanent financing for the project.

SECTION 18. ORS 391.610 is amended to read:

391.610. All expenses of the Oregon Mass Transportation Financing Authority incurred in carrying out the provisions of ORS 267.227 and 391.500 to 391.660 shall be payable solely from funds provided under the authority of ORS 267.227 and 391.500 to 391.660. For the purposes of meeting the necessary expenses of initial organization and operation until such date as the authority derives moneys from funds provided hereunder, the authority shall be empowered to borrow moneys from districts, and districts are empowered to lend money to the authority as may be required and agreed for such necessary expenses of organization and operation. Expenses incurred by the authority in connection with any application by a district for financial assistance under ORS 267.227 and 391.500 to 391.660 [shall be paid by such district as provided in ORS 267.200 (10), or, in the alternative and in the discretion of the authority,] may be paid from the proceeds of bonds issued by the authority.

SECTION 19. ORS 381.025, 381.030, 381.035, 381.040, 381.045, 381.065, 381.070, 381.086, 381.088, 381.090, 381.092, 381.094, 381.110, 381.805, 381.810, 381.815, 381.820, 382.105, 382.110, 382.115, 382.120, 382.125, 383.310, 383.315, 383.320, 383.330, 383.340, 383.350, 383.360, 383.370, 383.380, 383.385 and 383.386 are repealed.

Passed by Senate April 25, 2007

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Secretary of Senate

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President of Senate

Passed by House June 4, 2007

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Speaker of House

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State