

Requested by SENATE COMMITTEE ON BUSINESS AND TRANSPORTATION

**PROPOSED AMENDMENTS TO
B-ENGROSSED HOUSE BILL 2750**

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

3 Delete line 3.

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

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

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

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

12 **“(b) ‘Bridge project’ means a project to plan, acquire, finance, de-
13 velop, design, construct, reconstruct, replace, improve, maintain,
14 manage, repair, own, lease, operate or otherwise develop a bridge that
15 spans the Columbia River to Washington State and any related facili-
16 ties.**

17 **“(c) ‘Related facilities’ means real or personal property for:**

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

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

21 **“(C) Generating revenue that can reduce tolls or that will be de-**

1 **posited in an account established under section 3 (2) of this 2017 Act.**

2 **“(2)(a) For the purposes set forth in paragraph (b) of this subsection**
3 **and subject to the requirements of subsection (3) of this section, the**
4 **Port of Hood River may use a competitive process or private negoti-**
5 **ation to award a contract, agreement, franchise or license to a private**
6 **entity or a unit of government for a bridge project within the port’s**
7 **district.**

8 **“(b) The purposes of awarding a contract, agreement, franchise or**
9 **license under paragraph (a) of this subsection are to:**

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

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

13 **“(C) Develop partnerships with private entities or units of govern-**
14 **ment.**

15 **“(3)(a) A contract, agreement, franchise or license under subsection**
16 **(2) of this section must, at a minimum, specify:**

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

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

22 **“(C) How the public and private partners will allocate financial re-**
23 **sponsibility for cost overruns;**

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

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

28 **“(F) Whether the bridge project is consistent with the plan that the**
29 **Oregon Transportation Commission developed under ORS 184.618 and**
30 **any applicable regional transportation plans or local transportation**

1 system programs and, if the bridge project is not consistent with the
2 plans or programs, how and when the bridge project will become con-
3 sistent with the plans and programs.

4 “(b) In addition to the specifications set forth in paragraph (a) of
5 this subsection, the contract, agreement, franchise or license must
6 provide that:

7 “(A) The public has dedicated and unrestricted use of the bridge for
8 the duration of the bridge’s functional life unless the port, a state
9 government or the federal government declares an emergency that
10 forbids using the bridge; and

11 “(B) Construction of the bridge project may not proceed until the
12 Department of Transportation has issued, in accordance with ORS
13 374.305, any permits that are necessary to connect the bridge project
14 to state highways.

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

20 “(4)(a) ORS 279.835 to 279.855, 381.260, 381.275 and 381.280 and ORS
21 chapters 279A, 279B and 279C do not apply to a bridge project under-
22 taken under this section or to a contract, agreement, franchise or li-
23 cense the port awards under this section, except that if public moneys
24 are used to pay costs of constructing public works that are part of a
25 bridge project:

26 “(A) ORS 279C.360 to 279C.390 and 279C.800 to 279C.870 apply to the
27 public works; and

28 “(B) The construction contract for the public works must provide
29 for paying workers under the contract in accordance with ORS
30 279C.540 and 279C.800 to 279C.870.

1 **“(b) Before awarding a contract, agreement, franchise or license**
2 **under subsection (2) of this section, the port shall adopt rules that**
3 **substantially conform with the rules that the Department of Trans-**
4 **portation has adopted, as of the effective date of this 2017 Act, to im-**
5 **plement the provisions of ORS 367.800 to 367.824.**

6 **“(5) Sensitive business, commercial or financial information that a**
7 **private entity provides to the port for the purpose of determining the**
8 **feasibility of a private entity’s participation in a bridge project is ex-**
9 **empt from disclosure under ORS 192.410 to 192.505. The terms of a**
10 **proposed or final contract, agreement, franchise or license for a bridge**
11 **project between the port and a private entity are subject to disclosure**
12 **under ORS 192.410 to 192.505.**

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

16 **“(A) The qualities of the design that the proposer submits, if ap-**
17 **propriate, including:**

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

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

23 **“(iii) The traffic capacity of the design;**

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

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

29 **“(B) The extent to which the bridge project will involve small**
30 **businesses. The port shall encourage small businesses to participate**

1 in the bridge project to the maximum extent that the port determines
2 is practicable. As used in this subparagraph:

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

7 “(ii) ‘Small business’ does not include a subsidiary or parent com-
8 pany that belongs to a group of firms that the same individuals own
9 or control and that have average aggregate annual gross receipts
10 during the last three years in excess of \$1 million for construction
11 firms or \$300,000 for firms that are not construction firms.

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

16 “(D) The experience of the proposer and the proposer’s subcontrac-
17 tors in planning, acquiring, financing, developing, designing, con-
18 structing, reconstructing, replacing, improving, maintaining,
19 managing, repairing, owning, leasing or operating a bridge project of
20 a size and scope similar to the bridge project that the port proposes.

21 “(E) The terms of the financial arrangement that the proposer ac-
22 cepts or proposes with respect to franchise fees, license fees, lease
23 payments or operating expenses and the proposer’s required rate of
24 return from operating or maintaining the bridge.

25 “(F) The terms that the proposer offers for operating the bridge
26 project, including:

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

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

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

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

6 **“(A) Reduce the cost of constructing the bridge project;**

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

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

9 **“(7) Notwithstanding any other provision of this section, the port**
10 **may use any method to award a contract, agreement, franchise or li-**
11 **cence that is necessary to comply with the requirements of a grant**
12 **or other funding source.**

13 **“(8) Before awarding a contract, agreement, franchise or license**
14 **under subsection (2) of this section, the port shall engage legal counsel**
15 **for the purpose of:**

16 **“(a) Advising the port concerning the legality of specific proposed**
17 **partnerships;**

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

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

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

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

28 **“(9) For purposes of complying with applicable state and local land**
29 **use laws, including statewide planning goals, comprehensive plans,**
30 **land use regulations, ORS chapters 195, 196, 197, 198, 199, 215, 221, 222**

1 and 227 and any requirement that the Land Conservation and Development Commission imposes, a bridge project is a project of the port and is not a project of any other person or entity.

4 “(10) A bridge project that the port undertakes or that another entity undertakes under ORS 381.205 to 381.305 is:

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

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

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

14 **“(2) The port or the private entity or unit of government that the port designates shall deposit any proceeds from a toll, administrative fee or civil penalty into an account that the port establishes. The port or unit of government shall deposit the proceeds with a depository that meets the requirements set forth in ORS chapter 295. A private entity shall deposit the proceeds with an insured institution, as defined in ORS 706.008.**

21 **“(3)(a) The Department of Transportation shall enter into an agreement with the port or another entity that operates the bridge project that:**

24 **“(A) Describes the process by which the department aids the port or the other entity in collecting any unpaid tolls, civil penalties or administrative fees; and**

27 **“(B) Provides that the department shall refuse to renew the motor vehicle registration of the motor vehicle of a person that failed to pay a toll, a civil penalty or an administrative fee assessed under this subsection.**

1 **“(b) For the purpose of conducting the activities described in para-**
2 **graph (a) of this subsection, the department shall:**

3 **“(A) Treat a toll established in connection with the bridge project**
4 **as a toll that was established under ORS 383.004;**

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

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

9 **“SECTION 4. (1) Except as provided in subsection (2) of this section,**
10 **the Port of Hood River may sell or otherwise transfer ownership of a**
11 **bridge or bridge project that the port owns if, in an agreement for the**
12 **sale or transfer, the port provides that:**

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

16 **“(b) The port has a right of first refusal in any subsequent sale or**
17 **transfer, other than a sale or transfer to a subsidiary or affiliate of**
18 **the seller, under which the seller must offer the port a price, terms**
19 **and conditions that are the same as or better than the price, terms**
20 **and conditions that the seller offers to any other prospective pur-**
21 **chaser; and**

22 **“(c) The state has a right of first refusal that the state may exercise**
23 **if the port declines to purchase the bridge or bridge project under**
24 **paragraph (b) of this subsection under which the seller must offer the**
25 **state a price, terms and conditions that are the same as or better than**
26 **the price, terms and conditions that the seller offers to any other**
27 **prospective purchaser unless the sale or transfer is to a subsidiary or**
28 **affiliate of the seller.**

29 **(2) The rights of first refusal described in subsection (1) of this**
30 **section do not apply to a sale of the bridge or bridge project that oc-**

1 **curs in conjunction with or as a consequence of a reorganization of**
2 **the seller or the seller's merger with another entity.**

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

4 “381.205. Each county, city, town or port of this state adjoining or bor-
5 dering on any interstate river or stream of water may:

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

9 **“(2) Subject to other provisions of law, acquire property and use**
10 **revenues to connect bridges to roads, approaches and other transpor-**
11 **tation facilities within or outside the county's, city's, town's or port's**
12 **boundaries.**

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

14 “381.265. (1) Preparation of the specifications and designs of any bridge
15 constructed under ORS 381.205 to 381.305 may give consideration to and in-
16 clude provisions for facilities and accommodations for traffic by rail as well
17 as for traffic by motor vehicle, team, **bicycle**, pedestrian or other regular
18 highway traffic.

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

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

25 “381.824. Every bridge that passes over a river or body of water forming
26 a boundary between this state and another state, and that has been con-
27 structed or acquired and is being operated by the other state or by any
28 county, city, **port** or other municipality of the other state, [*shall,*] together
29 with its approaches, [*be*] **is** exempt from all property and other taxes in this
30 state, if the other state exempts from all taxation every such interstate

1 bridge, together with its approaches, constructed or acquired and operated
2 by this state or by any county, city, port or other municipality of this state.

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

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