

Enrolled House Bill 4089

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Joint Committee on Transportation for Hood River-White Salmon Replacement Bridge Project Bi-State Working Group)

CHAPTER

AN ACT

Relating to interstate bridges; creating new provisions; amending ORS 383.004 and 383.035; and prescribing an effective date.

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

SECTION 1. Findings. The Legislative Assembly finds and declares that:

(1) Interstate toll bridges owned by local governments provide critical links for the transport of workers, services, tourism and emergency response between the State of Oregon and the State of Washington, and for Oregon businesses to transport local agricultural products, forest products, rock, gravel and manufactured products within the region and to national markets.

(2) Existing interstate toll bridges owned by local governments are becoming functionally obsolete, weight-restricted, seismically deficient and hazardous for marine freight, and need to be replaced.

(3) Replacement of aging interstate toll bridges by local governments is extremely challenging, and the local governments that own or are served by the bridges require additional means to address the problem. For some bistate regions, the successful replacement and subsequent operation of interstate toll bridges is best accomplished by an independent bistate governmental authority, chartered by local governments, with sufficient powers to efficiently and equitably develop, operate, maintain, toll and finance a replacement bridge.

SECTION 2. Definitions. As used in sections 2 to 15 of this 2022 Act, unless the context requires otherwise:

(1) "Board" means the board of directors of a commission.

(2) "Bridge" means an interstate toll bridge, including any approaches, that replaces an existing bridge crossing the Columbia River between the State of Oregon and the State of Washington.

(3) "Bridge finance plan" means a plan adopted by a board to finance the design, construction, operation, maintenance, administration and governance of a bridge replacement project.

(4) "Bridge replacement project" means a project undertaken by a commission to replace an existing bridge, including but not limited to any approaches, buildings, structures, facilities, equipment, improvements, tolling systems and software and appurtenances necessary or incidental to the new bridge.

(5) “Commission” means a public corporation formed under section 3 of this 2022 Act with the powers described in section 5 of this 2022 Act.

(6) “Commission formation agreement” means a bistate agreement among local governments to form a commission.

(7) “Construction” or “construct” means activities, materials and services necessary or incidental to the design and construction of a bridge replacement project, including but not limited to engineering, permitting, property acquisition, procurement, installation of equipment, site work, utility relocation, inspection, start-up, landscaping, hard construction, environmental mitigation, demolition and removal of an existing bridge and associated accounting, legal, administrative, project management and governance activities.

(8) “Debt instrument” means a contractual undertaking, financing agreement or other instrument entered into or issued by a commission to evidence an obligation to repay or guaranty repayment of borrowed moneys, including but not limited to bonds, refunding bonds, notes, loans, interim financing, anticipation notes, certificates, credit enhancement devices or other debt obligations.

(9) “Departments of transportation” means the Oregon Department of Transportation and the Washington State Department of Transportation.

(10) “Director” means a duly appointed member of the board or, when acting in the absence of a director, a duly appointed alternate member of the board.

(11) “Existing bridge” means an existing interstate toll bridge crossing the Columbia River between the State of Oregon and the State of Washington.

(12) “Local government” has the meaning given that term in ORS 174.116 and includes local governments in the State of Washington.

(13) “Operate,” “operation” or “operations” means the activities necessary or incidental to the operation, tolling, maintenance, repair, rehabilitation, renewal or replacement of a bridge, and the associated financial, legal, administrative, management and governance activities.

(14) “Other charges” means administrative and other fees, civil penalties and other amounts established by the commission for use of a bridge.

(15) “Primary place of business” means the state and county within which the principal headquarters office of a commission is established in a commission formation agreement, notwithstanding a subsequent relocation of the principal headquarters office of the commission.

(16) “Public corporation” means a corporation created under section 3 of this 2022 Act to perform essential governmental functions for the public purposes described in section 3 of this 2022 Act that, when issuing bonds or other debt instruments, acts on behalf of the local governments as a constituted authority, within the meaning of regulations adopted by the United States Department of the Treasury and rulings of the Internal Revenue Service under section 103 of the Internal Revenue Code.

(17) “State” means the State of Oregon or the State of Washington.

SECTION 3. Creation and Purposes. (1) Upon enactment by the State of Washington of legislation having the same material effect as sections 2 to 15 of this 2022 Act, local governments may enter into a commission formation agreement to form and charter a commission under this section. The commission is a public corporation formed under the laws of the State of Oregon and the State of Washington, vested with the powers and duties granted by sections 2 to 15 of this 2022 Act. The commission shall perform an essential governmental function and exercise the commission’s powers for the public purposes described in this section.

(2) Local governments by resolution may enter into a commission formation agreement, consistent with the requirements of sections 2 to 15 of this 2022 Act, to charter and form a commission. A commission formation agreement at a minimum must be approved and executed by the owner of an existing bridge and by the governing bodies of the counties within

which an existing bridge is situated. A commission formation agreement may be adopted by local governments in phases, provided that all required elements of a commission formation agreement be adopted before a board may authorize the issuance of toll revenue bonds. A commission formation agreement must specify:

- (a) A name for the commission;
- (b) The date on which the powers granted to the commission by sections 2 to 15 of this 2022 Act become effective;
- (c) The primary place of business for the purpose of establishing the applicable laws described in section 13 of this 2022 Act;
- (d) The composition and appointment process for members of the board as described in section 4 (1) and (2) of this 2022 Act;
- (e) The terms of office and any rules, responsibilities and requirements that apply to the offices of chair and cochair as described in section 4 (4) of this 2022 Act;
- (f) The requirements for formal actions of the board as described in section 4 (5) of this 2022 Act; and
- (g) Any other provisions adopted by a local government, provided that the provisions comply with the applicable laws under section 13 of this 2022 Act and do not impair or adversely affect the powers of the commission under sections 2 to 15 of this 2022 Act.

(3) A commission formation agreement may allow for a board to amend the provisions of the commission formation agreement pursuant to subsection (2)(d) to (g) of this section and section 4 (5) of this 2022 Act, and may establish conditions for an amendment.

(4) The purposes of a commission are to:

- (a) Design, engineer, develop, finance, refinance, install, equip and construct a bridge to replace and remove an existing bridge;
- (b) Act as a cooperative bistate governance structure to develop, own or control, fix and adjust tolls and regulate the use of a bridge;
- (c) Oversee the efficient operation, maintenance, administration, rehabilitation and renewal of a bridge; and
- (d) Perform other duties and exercise other powers as may be conferred upon the commission by law.

SECTION 4. Governance. (1) A commission shall be governed by a board of directors. A commission formation agreement must specify the number of voting directors and nonvoting directors, if any, appointed by local governments from each state and by governmental entities that are not local governments, if any, and shall establish procedures for the nomination and appointment of the directors, which may differ by state.

(2) Each nominating authority shall nominate and each appointing authority shall appoint an alternate director for each director it nominates or appoints. The alternate director may act only in the absence of the director for whom the alternate is appointed.

(3) Directors shall serve without compensation, but may be reimbursed for reasonable expenses incurred as an incident to the performance of their duties. Directors shall serve at the pleasure of the appointing authority and may be removed or suspended from office by the appointing authority with or without cause. The commission formation agreement must specify the initial term of office of each director to ensure that subsequent appointments by appointing authorities from each state are reasonably and similarly staggered. Except for the initial appointment of directors, the term of office of a director shall be four years.

(4) The board shall elect two cochairs from among the directors of the board. One cochair must reside in the State of Oregon and the other cochair must reside in the State of Washington. The cochairs shall serve as first cochair and second cochair, with the first cochair responsible for presiding at the commission meetings. The board shall specify which cochair will serve in which position within one year from the date of formation of the commission, after which time the two positions must alternate on an annual basis. The com-

mission formation agreement must establish the terms of office of the cochairs and may establish other requirements for the office of cochair as requested by the local governments.

(5) Formal actions of the board must be taken by ordinance or resolution duly approved at any regular or special meeting of the board. An action of the board is not effective unless there is a quorum present and a majority of the directors present assent to the action. A commission formation agreement must establish the requirements for a quorum and may establish other requirements for formal actions of the board as requested by the local governments.

(6) Unless otherwise provided in an ordinance or resolution adopted by a board, a board has the exclusive right to exercise the powers granted by sections 2 to 15 of this 2022 Act, and the exercise of the powers granted to the board by sections 2 to 15 of this 2022 Act may not be subject to any prior or subsequent authorization, approval or concurrence by a local government or other governmental entity in the State of Oregon or the State of Washington.

(7) A board must adopt rules, consistent with applicable laws under section 13 of this 2022 Act and a commission formation agreement, regarding the organization, activities and procedures of the board and the commission, as the board may determine.

SECTION 5. Powers. (1) In addition to any other powers granted under sections 2 to 15 of this 2022 Act, a commission may:

(a) Construct, purchase, lease, acquire, own, operate, maintain, control, hold, sell, convey, dispose of, finance or refinance real property, personal property, facilities, materials, supplies or equipment, or any interest therein, within the State of Oregon or the State of Washington, as the board deems necessary or incidental to the purposes of the commission described in section 3 of this 2022 Act;

(b) Secure all necessary federal, state and local authorizations, permits and approvals for the construction, maintenance, repair, operation, renewal, financing or refinancing of a bridge;

(c) Adopt, amend or repeal bylaws, rules or regulations, consistent with applicable laws under section 13 of this 2022 Act and a commission formation agreement, that further specify the powers and duties of a commission, clarify or interpret provisions in a commission formation agreement or clarify or interpret laws or regulations applicable to the commission;

(d) Receive and accept, with or without consideration, from a federal agency, a state, a local government or any other public or private source, grants, contributions, loans, advances, credit enhancements or other contributions in money, property, labor, materials, services or other things of value to accomplish the purposes of the commission;

(e) Invest the commission's monies in investments permitted for municipal corporations and disburse funds for the commission's lawful purposes;

(f) Make and enter into any contract or agreement the board deems necessary or incidental to the purposes of the commission;

(g) Grant, by franchise, lease or otherwise, the use of any property or facility owned or controlled by the commission and the making of payments for the use;

(h) Create and abolish offices, employments or positions, and employ or contract for professional and other services;

(i) Establish and enforce regulations governing the use of facilities owned or controlled by the commission, the services rendered by the commission and the tolls and other charges issued by the commission;

(j) Adopt and use a corporate seal;

(k) Sue and be sued in the name of the commission;

(L) Establish special funds, and controls on deposits to and disbursements from the special funds, as the commission deems convenient for the implementation of sections 2 to 15 of this 2022 Act;

(m) Delegate any of the commission's powers and duties if consistent with the purposes of sections 2 to 15 of this 2022 Act;

(n) Perform other functions necessary or incidental to the purposes of the commission or to the execution of the powers granted under sections 2 to 15 of this 2022 Act; and

(o) Exercise other additional powers as may be conferred on the commission by law.

(2) A commission may not impose a tax or an assessment.

SECTION 6. Organization and Administration. (1) Before construction may begin on a bridge, a board must appoint or retain an executive director to perform the duties and functions of the chief administrator of the commission and exercise the powers conferred upon the executive director by the board or under sections 2 to 15 of this 2022 Act. The executive director serves at the pleasure of the board. Subject to any rules adopted by the commission, the executive director may appoint staff or retain consultants to carry out the purposes and duties of the commission.

(2) Before construction may begin on a bridge, the board must appoint or retain legal counsel, including but not limited to bond counsel, to furnish or cause to be furnished to the commission any opinions, advice and counsel requested by the commission, and to represent or oversee the representation of the commission in legal matters or hearings, as directed by the commission.

(3) The commission may employ such engineering, technical, legal, administrative, operating or other personnel, officers or agents on a regular, part-time or consulting basis as the commission deems necessary or beneficial to the performance of the commission's duties. The commission may fix and provide for the qualification, appointment, removal, term, tenure, compensation, pension and retirement rights of the commission's officers and employees. Employees of the commission are afforded the labor rights and protections afforded to public employees under the laws of the state within which the primary place of business of the commission is situated.

(4) All privileges and immunities from liability, laws and benefits that apply to directors, officers, agents or employees of a municipal corporation under the applicable laws described in section 13 of this 2022 Act apply to the directors, officers, agents and employees of the commission.

(5) The commission may purchase insurance or self-insure to protect and hold personally harmless any of the directors, officers, employees or agents of the commission from any action, claim or proceeding arising out of the performance, purported performance or failure of performance in good faith of duties for or employment with the commission of the directors, officers, employees and agents, and to hold the directors, officers, employees and agents harmless from any expenses connected with the defense, settlement or monetary judgments arising from the actions, claims or proceedings.

(6) The commission may purchase insurance or self-insure against loss or damage to any of the commission's properties or facilities, damage to persons or property, loss of revenues or other coverages, as the board may elect to accomplish the purposes of the commission. The board may determine the form and amount of the insurance coverage, provided that the insurance amount satisfies the requirements of any agreement arising from the issuance of bonds or other obligations by the commission. The board may enter into intergovernmental agreements with a state, a local government or a combination of states and local governments, to acquire or maintain insurance.

(7) Upon request by the State of Oregon, the State of Washington or a local government, the commission shall furnish information related to the commission's affairs to the requester. The commission shall prepare an annual report summarizing the major activities and expenditures of the commission for the fiscal year and forecasting the major activities and expenditures of the commission for the following year. The commission shall furnish a copy of the annual report, together with any additional information the commission deems appropriate, to the local governments and other interested parties.

(8) Except as provided in subsection (9) of this section, a board shall prepare and adopt an annual or a biennial budget and make appropriations consistent with this subsection. In no case can the adopted budget expenditure allowances exceed total estimated revenues unless accompanied by proposed legislation to obtain an equivalent amount of additional revenue. The board may adopt, and subsequently amend, a rule establishing requirements and processes for adopting a budget. The board shall:

- (a) Establish a budget committee;
- (b) Publish a public notice for each meeting of the budget committee;
- (c) Publish a public notice and hold a public hearing on the proposed budget before adopting a budget;
- (d) Adopt the budget, as amended or revised by the board, before the start of the budget period;
- (e) Adopt amendments to the adopted budget or adopt supplementary budgets during a budget period, as the board deems appropriate; and
- (f) Transmit to local governments a copy of the final budget and any amended or supplementary budgets adopted by the board.

(9) Notwithstanding subsection (8) of this section, a commission is not required to adopt a budget for any year in which the commission does not have revenue and all revenues and expenditures for a bridge replacement project derive from and are authorized by a budget of one or more local governments.

SECTION 7. Real Property. (1) A commission may finance, refinance, acquire or otherwise assume control of, by purchase, lease, donation or other means, real property or personal property, structures, property rights, franchises, easements or other property interests, whether situated within the State of Oregon or the State of Washington, as the board deems necessary or incidental to the purposes of the commission.

(2) The commission may exercise the power of eminent domain to acquire by condemnation any property, structures, property rights, franchises, easements or other property interests situated within the State of Oregon or the State of Washington as the board deems necessary or incidental to the purposes of the commission, subject to the applicable laws described in section 13 (3) of this 2022 Act. Property owned or held by a state or a local government may not be taken by the commission without the prior consent of the state or local government.

SECTION 8. Revenues. (1) A board shall have the exclusive power to impose, fix and periodically adjust the rate of tolls or other charges for use of a bridge owned or operated by the commission without approval, authorization or concurrence by a state legislature, state toll authority, local government, state agency, state official or other entity. The board may establish and implement rules for specifying the rate of tolls and other charges, including but not limited to discounts, exemptions and distinct rates for certain classes of vehicle and user. Nothing in ORS 383.001 to 383.245 prohibits a commission from establishing or setting a toll or other charge for use of a bridge owned or operated by the commission.

(2) In setting and periodically adjusting toll rates or other charges, a board shall ensure that toll rates and other charges annually yield revenue sufficient to meet the costs, expenses and obligations of the commission, including the satisfaction of the financial and other covenants made by the commission with regard to bonds or other debt instruments.

(3) To enforce the payment of tolls and other charges for use of a bridge, the commission may enter into agreements with the Department of Transportation and an agency of the State of Washington. An agreement may provide that:

(a) The department or agency shall provide information to the commission or the commission's designee to identify registered owners of vehicles who fail to pay a toll or other charge established by the commission under this section.

(b) If a commission, or a commission's designee, gives notice to the department or agency that a person has not paid a toll or other charge established under this section, the

department or agency shall refuse to renew the motor vehicle registration of the motor vehicle operated by the person at the time of the violation.

(c) The department or agency may renew a motor vehicle registration of a person described in paragraph (b) of this subsection upon receipt of a notice from a commission, or a commission's designee, indicating that all tolls and other charges established under this section and owed by the person have been paid.

(4) A transponder record or recorded image of a vehicle and the registration plate of the vehicle produced by a photo enforcement system at the time a driver of a vehicle did not pay a toll is prima facie evidence that the registered owner of the vehicle is the driver of the vehicle, provided that, if the registered owner of a vehicle is a person in the vehicle rental or leasing business, the registered owner may identify the person who was operating the vehicle at the time the toll was not paid or pay the toll and other charges. A registered owner of a vehicle who pays a toll or other charge imposed while another person was operating the vehicle of the registered owner is entitled to full reimbursement from the operator. The rights granted to the commission to enforce the payment of tolls and other charges of the commission under sections 2 to 15 of this 2022 Act are supplemental, and the commission may employ all other remedies available to the commission under the laws of the State of Oregon and the State of Washington.

(5) The proceeds from toll rates and other charges of the commission may only be used to pay the necessary and incidental costs and expenses incurred by the commission in connection with owning, constructing, operating, maintaining, renewing and governing a bridge, including but not limited to costs incurred for:

(a) The design, development, construction, equipping, installation, financing or refinancing of the bridge, demolition and removal of the existing bridge and mitigation of associated impacts;

(b) The operation, repair, maintenance, resurfacing, preservation, equipping, improvement, reconstruction, renewal and replacement of the bridge;

(c) The tolling of the bridge, the collection, administration and enforcement of tolls and the acquisition, leasing, maintenance and replacement of tolling equipment and software;

(d) The financing or refinancing of any bonds or other debt instruments of the commission;

(e) A reasonable return on investment for the private financing of the costs, expenses or obligations of the commission;

(f) The establishment and maintenance of reserves or sinking funds approved by the board; and

(g) Any other obligations or expenses incurred by the commission in carrying out the commission's purposes under sections 2 to 15 of this 2022 Act.

(6) The commission may grant to a public or private entity by franchise, lease or in another manner the use or control of all or part of a bridge, property or facility owned or under the control of the commission, and may fix the terms, conditions, rents and other payments for the use or control.

(7) For the purpose of funding a bridge under sections 2 to 15 of this 2022 Act, the approaches, connecting roads, related facilities and appurtenances on both sides of the Columbia River are designated as part of the highway system of Oregon. All revenues, receipts, grants, bond proceeds and other funds of the commission may be commingled and spent to carry out the purposes of the commission, unless and to the extent otherwise restricted by the terms of a grant agreement or debt instrument.

SECTION 9. Bridge Design and Construction. (1) The commission shall:

(a) Design and construct a bridge to standards and specifications satisfactory to the departments of transportation;

(b) Comply with all applicable permits, clearances and mitigation requirements; and

(c) Arrange for timely review by the departments of transportation of all pertinent engineering plans, specifications and related reports.

(2) The commission may undertake construction activities that have necessary permits and for which funding is available, provided that before issuing a notice to proceed with the construction of a bridge foundation, the commission shall:

(a) Prepare and adopt an initial bridge finance plan to fund the design, construction, operation, maintenance, administration and governance of the bridge. Before adopting the initial bridge finance plan, a board shall require a feasibility review of the initial bridge finance plan and shall submit the feasibility review to the departments of transportation and the local governments that are parties to the commission formation agreement, for their review. Following receipt of feedback from the departments of transportation and local governments, the board may adopt the initial bridge finance plan. After the initial bridge finance plan is adopted, the board may periodically adjust or amend the initial bridge finance plan; and

(b) Make and enter into a written agreement with the owner of an existing bridge, under terms and conditions that are mutually agreeable, regarding the removal and disposition of the existing bridge. The agreement must address:

(A) The roles, responsibilities and obligations of the parties regarding the removal and disposal of the existing bridge, including the liabilities or potential liabilities incident thereto;

(B) The retirement of the outstanding debt for which toll revenue from the existing bridge is pledged;

(C) The distribution of proceeds from the salvage value of the existing bridge;

(D) The disposition of the property, equipment or other assets incidental to the existing bridge;

(E) Mitigation of impacts to existing bridge operations; and

(F) Any other matters to which the commission and owner of the existing bridge agree.

(3) For purposes of the acquisition, design, construction, installation, operation or maintenance of the bridge, or any combination thereof, the commission, without the prior or subsequent authorization, approval or concurrence by the State of Oregon, the State of Washington, a local government or other governmental entity of either state, may enter into any combination of contracts, agreements or other arrangements with one or more private entities or units of government, or any combination thereof, as the commission may elect, including, but not limited to, any alternative or supplemental public works contract such as design-build and construction manager-general contractor contracts, public-private partnership agreement, lease agreement, franchise agreement or financing agreement, and may include any terms and conditions permitted under the Oregon Constitution and the Washington State Constitution and to which the parties agree.

(4) As part of the construction of a bridge, a commission shall demolish, remove and dispose of an existing bridge in accordance with applicable environmental permits and the terms of an agreement between the commission and owner of the existing bridge. Unless otherwise agreed to by the owner of the existing bridge, the proceeds from the sale of salvaged materials from the existing bridge are owing to the owner.

SECTION 10. Bridge Operations. (1) A board shall have the exclusive power to adopt and enforce the rules and regulations for the use, operation, maintenance, inspection and preservation of a bridge owned or operated by the commission, including loads permitted on the bridge and closing the bridge to any traffic deemed unsafe by the commission, provided that the commission must comply with all state and federal regulations generally applicable to bridge operations, maintenance, safety and inspections.

(2) A facility or property owned, leased, operated or controlled by the commission may be operated by the commission directly or by a public or private entity pursuant to a contract, lease or agreement.

(3) Compensation to a contractor under an operating contract may be in the form of a payment by the commission to the contractor for services rendered, a payment by the con-

tractor to the commission for the rights to operate the facility or property or other such arrangements as the board may elect.

(4) A state agency or local government may pledge revenue or other assistance to support or guaranty, in whole or in part, the repayment of debt, costs of operations or capitalization of reserves of the commission under such terms as the parties may agree, and the commission may accept the assistance.

SECTION 11. Financing. (1) A board, for any lawful purpose of the commission, without the necessity of any assent by electors, local governments or any other governmental entity, may by resolution or ordinance provide for the issuance and sale of:

(a) Revenue bonds or other debt instruments paid from and secured by all or any revenue of the commission;

(b) Short-term obligations, notes, warrants or other debt instruments in anticipation of any grant receipts from the federal government, a state government or a local government or other receipts of the commission; and

(c) Revenue refunding bonds or other refunding debt instruments for the purpose of redeeming, refinancing, extending or unifying, in whole or in part, outstanding bonds or other debt instruments.

(2) To the extent permitted by federal law, bonds and other debt instruments of the commission may be issued as taxable bonds or as tax-exempt bonds under the income tax laws of the United States. Notwithstanding the status of the bonds or other debt instruments for federal income tax purposes, interest paid to the owners of the bonds or other debt instruments of the commission is exempt from personal income taxes imposed by the State of Oregon or any political subdivision, district or municipality thereof.

(3) If the applicable laws under section 13 of this 2022 Act are those of the State of Oregon, the commission as a public body may issue and sell:

(a) Revenue bonds or other debt instruments under ORS 287A.150;

(b) Debt instruments to refund outstanding debt instruments under ORS 287A.150 (6) and ORS 287A.360 to 287A.380; and

(c) Short-term obligations under ORS 287A.180.

(4) If the applicable laws under section 13 of this 2022 Act are those of the State of Oregon, the commission as a public body shall administer bonds and other debt instruments under ORS 287A.300 to 287A.380, provided that the commission may not issue a general obligation bond or pledge any taxing power to an obligation.

(5)(a) The commission may enter into one or more agreements with a federal agency for grants, loans, advances, credit enhancements or other contributions subject to the applicable federal law.

(b) If the commission enters into an agreement under paragraph (a) of this subsection, the commission is not required to comply with otherwise applicable state statutes that conflict with the applicable federal law.

(6) For the benefit of any holders of bonds or debt instruments that are outstanding or otherwise authorized by a commission:

(a) The board shall continue in effect toll rates and other charges that satisfy sections 2 to 15 of this 2022 Act and the covenants made by the commission, and may not take any action or inaction to impair the board's ability to do so; and

(b) The State of Oregon, the State of Washington and local governments may not take any action that impairs, diminishes or affects adversely the interest and rights of the holders of bonds or debt instruments of the commission.

SECTION 12. Taxation. (1) Notwithstanding the laws of this state or the State of Washington and except as provided in subsection (2) of this section, a state or political subdivision may not require the commission to pay a tax or assessment, or an in lieu of tax or assessment, including but not limited to a property tax, sales tax, use tax or other tax or assessment upon real property or personal property acquired or otherwise under the control

of the commission, or upon an activity or expenditure of the commission, or upon the revenues of the commission.

(2) Notwithstanding subsection (1) of this section, a state or political subdivision may require a commission to pay a tax or assessment to the same extent as a municipal corporation.

SECTION 13. Applicable Law and Jurisdiction. (1) A commission is subject to applicable federal law, sections 2 to 15 of this 2022 Act, rules adopted by the commission's board under sections 2 to 15 of this 2022 Act and any state or local laws that apply to a municipal corporation as specified in this section.

(2) Except as provided in subsections (3) and (4) of this section, the commission, the board and the commission's officials, employees and agents are governed by the laws of the primary place of business. The laws of the primary place of business include, but are not limited to, laws pertaining to local government audits, financial administration and accounting, public records, prohibitions on using facilities for campaign purposes, open public meetings, the code of ethics for municipal officers, the rights of public employees and local government whistleblower protections.

(3) The real estate transactions of, and the exercise of eminent domain by, the commission, including relocation assistance, compliance with land use, environmental and building codes and other actions of the commission pertaining to the ownership, control or use of a particular property site or area as the board may determine by rule, are governed by the laws of the state and local jurisdiction within which the particular property site or area is situated.

(4) If a conflict arises between a provision of sections 2 to 15 of this 2022 Act and a provision of state or local law, the provision under sections 2 to 15 of this 2022 Act controls.

(5) The court of original jurisdiction for any action brought by or against the commission is the court designated under the applicable laws under this section.

SECTION 14. Implementation and Dissolution. (1) A grantee for a federal, state or local grant for a bridge owned or to be owned by a commission that was awarded before the formation date of the commission is the grantee until the grant is closed under the terms of the grant agreement, unless otherwise agreed to by the grantee and the commission. The governing body of the grantee shall oversee the work under the grant, provided that the grantee coordinate with the commission and not take any actions inconsistent with the policy direction of the commission, unless required by the terms of the grant agreement. Following the formation date of the commission, the commission is the applicant and grantee for all federal, state or local grants for the bridge, unless the commission agrees otherwise. The commission shall establish procedures for the timely coordination of the commission's activities with the states and local governments.

(2)(a) The departments of transportation and local governments may enter into agreements with a commission to furnish to the commission surveys, engineering, plans, specifications, construction management, project controls, operations, administration and other technical services.

(b) The commission shall reimburse the departments of transportation and local governments for services furnished under paragraph (a) of this subsection.

(3) Before receiving tolls or other charges, the commission may fund activities under sections 2 to 15 of this 2022 Act in any manner permitted by applicable laws under section 13 of this 2022 Act, including but not limited to:

(a) Borrowing funds from the federal government, the State of Oregon, the State of Washington, a local government or a combination thereof, and repaying the borrowed funds following the opening of the bridge with the proceeds from tolls and other charges for use of the bridge, or in such other manner as the parties may agree;

(b) Receiving a grant from the federal government, the State of Oregon, the State of Washington, a local government or combination thereof; and

(c) Receiving monies as a subrecipient of a federal, state or local government grant for which a department of transportation or local government is the grantee. To the extent permitted by the grant agreement, the departments of transportation and local governments may enter into agreements with the commission to make a portion of the grant funds available to the commission under the terms and conditions to which the parties agree.

(4)(a) The commission may assign or otherwise convey the commission's properties, facilities, funds, accounts, obligations or duties to a state agency, local government or combination thereof, provided that the assignment or conveyance does not in any manner impair or affect adversely the interests or rights of the holders of any bonds or other debt instruments of the commission.

(b) A state agency or local government may accept an assignment or conveyance under paragraph (a) of this subsection.

(5) A commission may be dissolved as follows:

(a) Before the commission issues any bonds or other debt instrument, the board may adopt a resolution to dissolve the commission at any time upon determining that the dissolution is in the public interest. The dissolution resolution must address the methods by which all liabilities and obligations of the commission will be satisfied before the effective date of the dissolution, provided that all liabilities incurred by the commission must be satisfied exclusively from the assets and properties of the commission and no creditor or other person shall have any right of action against any local government that formed the commission on account of any debts, obligations or liabilities of the commission. The dissolution resolution must also address the distribution and transference to local governments of any properties or other assets of the commission that may remain after the satisfaction of all commission liabilities and other matters that the board deems appropriate. A resolution to dissolve a commission may not take effect until at least a majority of the local governments in each state agree in writing to the resolution.

(b) After the commission issues bonds or other debt instruments or if the commission is insolvent, the circuit court or superior court for the county in which the primary place of business is situated shall have jurisdiction and authority to appoint trustees or receivers of the property and assets of the commission and supervise such trusteeship or receivership, provided that all liabilities incurred by the commission be satisfied exclusively from the assets and properties of the commission and no creditor or other person shall have any right of action against a local government that formed the commission on account of any debts, obligations or liabilities of the commission. If a commission is dissolved and properties or assets of the commission remain after the satisfaction of all of the commission's outstanding debts, obligations or liabilities, the remaining property and assets of the commission must be transferred to local governments in accordance with an order issued by the court. The allocation and transfer of the remaining properties and assets of the commission to local governments must be in such manner as the court determines is equitable and serves the public interest.

SECTION 15. General Provisions. (1) Sections 2 to 15 of this 2022 Act must be liberally construed to effectuate the purposes of the commission, and the powers and authority granted to the commission under sections 2 to 15 of this 2022 Act are supplemental to all other powers and authorities granted to municipal corporations under the applicable laws described under section 13 of this 2022 Act.

(2) A legal challenge to the formation of a commission intended to be authorized or created under sections 2 to 15 of this 2022 Act may not be commenced more than 30 days after the effective date of a commission formation agreement.

SECTION 16. ORS 383.004 is amended to read:

383.004. (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 booths or electronic toll collection systems 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 all expenses and obligations related to the indebtedness including, without limitation, financial covenants, debt service requirements, reserve requirements and any other funding requirements established under the terms of any indenture prepared under ORS 383.225 and any other contracts establishing the terms of the indebtedness, 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)(a) Nothing in ORS 383.001 to 383.245 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.

(b) Nothing in ORS 383.001 to 383.245 prohibits Multnomah County from establishing a toll on the bridges across the Willamette River that are within the boundaries of the City of Portland and that are operated and maintained by Multnomah County as required under ORS 382.305 and 382.310.

(c) Nothing in ORS 383.001 to 383.245 prohibits the Port of Hood River from establishing a toll on the bridges across the Columbia River that are operated and maintained by the port.

(d) Nothing in ORS 383.001 to 383.245 prohibits the Port of Cascade Locks from establishing a toll on the bridges across the Columbia River that are operated and maintained by the port.

(e) Nothing in ORS 383.001 to 383.245 prohibits a commission formed under section 3 of this 2022 Act from establishing a toll on a bridge across the Columbia River that is operated and maintained by the commission or the commission's designee.

SECTION 17. ORS 383.035 is amended to read:

383.035. (1) A person shall pay a toll established under ORS 383.004.

(2) A person who fails to pay a toll established under ORS 383.004 shall pay to the Department of Transportation the amount of the toll, a civil penalty and an administrative fee established by the tollway operator not to exceed the actual cost of collecting the unpaid toll. The department shall adopt by rule the amount of civil penalty that may be imposed for each violation of subsection (1) of this section.

(3) A civil penalty imposed under this section may be remitted or reduced upon such terms and conditions as the department considers proper and consistent.

(4) In addition to any other penalty, the department shall refuse to renew the motor vehicle registration of a motor vehicle when the registered owner of the motor vehicle has not paid the toll, the civil penalty and any administrative fee charged under this section.

(5) This section does not apply to:

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

(b) 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.

(6) Civil penalties imposed under this section shall be imposed in the manner provided by ORS 183.745.

(7) **The department may enter into an agreement with a commission or a commission’s designee under section 8 (3) of this 2022 Act to enforce the payment of tolls and other charges for use of an interstate toll bridge.**

SECTION 18. The section captions used in this 2022 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2022 Act.

SECTION 19. This 2022 Act takes effect on the 91st day after the date on which the 2022 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Passed by House February 11, 2022

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

Passed by Senate February 21, 2022

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2022

Approved:

.....M,....., 2022

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2022

.....
Shemia Fagan, Secretary of State