

CHAPTER 781

AN ACT

SB 810

Relating to transportation; creating new provisions; amending ORS 271.310, 305.410, 319.280, 319.550, 319.665, 319.831, 366.505, 367.802, 367.804 and 367.806; limiting expenditures; and prescribing an effective date.

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

DEFINITIONS

SECTION 1. Sections 2 to 15 of this 2013 Act are added to and made a part of ORS chapter 319.

SECTION 2. As used in sections 2 to 15 of this 2013 Act:

(1) "Highway" has the meaning given that term in ORS 801.305.

(2) "Lessee" means a person that leases a motor vehicle that is required to be registered in Oregon.

(3)(a) "Motor vehicle" has the meaning given that term in ORS 801.360.

(b) "Motor vehicle" does not mean a motor vehicle designed to travel with fewer than four wheels in contact with the ground.

(4) "Registered owner" means a person, other than a vehicle dealer that holds a certificate issued under ORS 822.020, that is required to register a motor vehicle in Oregon.

(5) "Subject vehicle" means a motor vehicle that is the subject of an application approved pursuant to section 4 of this 2013 Act.

ROAD USAGE CHARGES

SECTION 3. (1)(a) Except as provided in paragraph (b) of this subsection, the registered owner of a subject vehicle shall pay a per-mile road usage charge for metered use by the subject vehicle of the highways in Oregon.

(b) During the term of a lease, the lessee of a subject vehicle shall pay the per-mile road usage charge for metered use by the subject vehicle of the highways in Oregon.

(2) The per-mile road usage charge is 1.5 cents per mile.

SECTION 4. (1) A person wishing to pay the per-mile road usage charge imposed under section 3 of this 2013 Act must apply to the Department of Transportation on a form prescribed by the department.

(2) The department shall approve a valid and complete application submitted under this section if:

(a) The applicant is the registered owner or lessee of a motor vehicle;

(b) The motor vehicle is equipped with a method selected pursuant to section 6 of this 2013 Act for collecting and reporting the metered use by the motor vehicle of the highways in Oregon;

(c) The motor vehicle has a gross vehicle weight rating of 10,000 pounds or less; and

(d) Approval does not cause the number of subject vehicles active in the road usage charge program on the date of approval to exceed 5,000, of which no more than 1,500 may have a rating of less than 17 miles per gallon and no more than 1,500 may have a rating of at least 17 miles per gallon and less than 22 miles per gallon, such ratings to be determined pursuant to a method established by the department.

(3) Approval of an application under this section subjects the applicant to the requirements of section 10 of this 2013 Act until the person ends the person's voluntary participation in the road usage charge program in the manner required under subsection (4) of this section.

(4) A person may end the person's voluntary participation in the road usage charge program at any time by notifying the department, returning the emblem issued under section 15 of this 2013 Act to the department and paying any outstanding amount of road usage charge for metered use by the person's subject vehicle.

REVENUE

SECTION 5. Moneys collected from the road usage charges imposed under section 3 of this 2013 Act shall be deposited in the State Highway Fund and allocated for distribution as follows:

(1) 50 percent to the Department of Transportation.

(2) 30 percent to counties for distribution as provided in ORS 366.762.

(3) 20 percent to cities for distribution as provided in ORS 366.800.

ADMINISTRATION

SECTION 6. (1) As used in this section, "open system" means an integrated system based on common standards and an operating system that has been made public so that components performing the same function can be readily substituted or provided by multiple providers.

(2)(a) The Department of Transportation, in consultation with the Road User Fee Task Force, shall establish the methods for recording and reporting the number of miles that subject vehicles travel on highways.

(b) When taking action under this subsection, the department shall consider:

- (A) The accuracy of the data collected;
- (B) Privacy options for persons liable for the per-mile road usage charge;
- (C) The security of the technology;
- (D) The resistance of the technology to tampering;
- (E) The ability to audit compliance; and
- (F) Other relevant factors that the department deems important.

(c) The department shall establish at least one method of collecting and reporting the number of miles traveled by a subject vehicle that does not use vehicle location technology.

(d)(A) The department shall adopt standards for open system technology used in methods established under this subsection.

(B) In adopting standards pursuant to this paragraph, the department shall collaborate with agencies of the executive department as defined in ORS 174.112 to integrate information systems currently in use or planned for future use.

(3) The department shall provide the persons liable for the per-mile road usage charge the opportunity to select a method from among multiple options for collecting and reporting the metered use by a subject vehicle of the highways in Oregon.

SECTION 7. The Department of Transportation shall provide by rule for the collection of the road usage charges imposed under section 3 of this 2013 Act, including penalties and interest imposed on delinquent charges.

SECTION 8. (1) The Department of Transportation shall establish by rule reporting periods for the road usage charges imposed under section 3 of this 2013 Act.

(2) Reporting periods established under this section may vary according to the facts and circumstances applicable to classes of registered owners, lessees and subject vehicles.

(3) In establishing reporting periods, the department shall consider:

(a) The effort required by registered owners or lessees to report metered use and to pay the per-mile road usage charge;

(b) The amount of the per-mile road usage charge owed;

(c) The cost to the registered owner or lessee of reporting metered use and of paying the per-mile road usage charge;

(d) The administrative cost to the department; and

(e) Other relevant factors that the department deems important.

SECTION 9. (1) As used in this section:

(a) "Certified service provider" means an entity that has entered into an agreement with the Department of Transportation under ORS 367.806 for reporting metered use by a subject

vehicle or for administrative services related to the collection of per-mile road usage charges and authorized employees of the entity.

(b) "Personally identifiable information" means any information that identifies or describes a person, including, but not limited to, the person's travel pattern data, per-mile road usage charge account number, address, telephone number, electronic mail address, driver license or identification card number, registration plate number, photograph, recorded images, bank account information and credit card number.

(c) "VIN summary report" means a monthly report by the department or a certified service provider that includes a summary of all vehicle identification numbers of subject vehicles and associated total metered use during the month. The report may not include location information.

(2) Except as provided in subsections (3) and (4) of this section, personally identifiable information used for reporting metered use or for administrative services related to the collection of the per-mile road usage charge imposed under section 3 of this 2013 Act is confidential within the meaning of ORS 192.502 (9)(a) and is a public record exempt from disclosure under ORS 192.410 to 192.505.

(3)(a) The department, a certified service provider or a contractor for a certified service provider may not disclose personally identifiable information used or developed for reporting metered use by a subject vehicle or for administrative services related to the collection of per-mile road usage charges to any person except:

(A) The registered owner or lessee;

(B) A financial institution, for the purpose of collecting per-mile road usage charges owed;

(C) Employees of the department;

(D) A certified service provider;

(E) A contractor for a certified service provider, but only to the extent the contractor provides services directly related to the certified service provider's agreement with the department;

(F) An entity expressly approved to receive the information by the registered owner or lessee of the subject vehicle; or

(G) A police officer pursuant to a valid court order based on probable cause and issued at the request of a federal, state or local law enforcement agency in an authorized criminal investigation involving a person to whom the requested information pertains.

(b) Disclosure under paragraph (a) of this subsection is limited to personally identifiable information necessary to the respective recipient's function under sections 2 to 15 of this 2013 Act.

(4)(a) Not later than 30 days after completion of payment processing, dispute resolution for a

single reporting period or a noncompliance investigation, whichever is latest, the department and certified service providers shall destroy records of the location and daily metered use of subject vehicles.

(b) Notwithstanding paragraph (a) of this subsection:

(A) For purposes of traffic management and research, the department and certified service providers may retain, aggregate and use information in the records after removing personally identifiable information.

(B) A certified service provider may retain the records if the registered owner or lessee consents to the retention. Consent under this subparagraph does not entitle the department to obtain or use the records or the information contained in the records.

(C) Monthly summaries of metered use by subject vehicles may be retained in VIN summary reports by the department and certified service providers.

(5) The department, in any agreement with a certified service provider, shall provide for penalties if the certified service provider violates this section.

SECTION 10. (1) On a date determined by the Department of Transportation under section 8 of this 2013 Act, the registered owner or lessee of a subject vehicle shall report the metered use by the subject vehicle, rounded up to the next whole mile, and pay to the department the per-mile road usage charge due under section 3 of this 2013 Act for the reporting period.

(2) Unless a registered owner or lessee presents evidence in a manner approved by the department by rule that the subject vehicle has been driven outside this state, the department shall assume that all metered use reported represents miles driven by the subject vehicle on the highways in Oregon.

REFUNDS AND EXEMPTIONS

SECTION 11. (1) The Department of Transportation shall provide a refund to a registered owner or lessee that has overpaid the per-mile road usage charge imposed under section 3 of this 2013 Act.

(2) The department may provide by rule that the refund under this section be granted as a credit against future per-mile road usage charges incurred by the registered owner or lessee.

SECTION 12. (1) A registered owner or lessee that has paid the per-mile road usage charge imposed under section 3 of this 2013 Act may apply to the Department of Transportation for a refund for metered use of a road, thoroughfare or property in private ownership.

(2) An application for a refund under this section must be submitted to the department within 15 months after the date on which the per-mile road usage charge for which a refund is claimed is paid.

(3) The application required under this section shall be in a form prescribed by the department by rule and must include a signed statement by the applicant indicating the number of miles for which the refund is claimed.

(4) The department may require the applicant for a refund under this section to furnish any information the department considers necessary for processing the application.

SECTION 13. (1) The Department of Transportation may investigate a refund application submitted under section 12 of this 2013 Act and gather and compile such information related to the application as the department considers necessary to safeguard the state and prevent fraudulent practices in connection with tax refunds and tax evasion.

(2) The department may, in order to establish the validity of an application, examine the relevant records of the applicant for such purposes.

(3) If an applicant does not permit the department to examine the relevant records, the applicant waives all rights to the refund to which the application relates.

SECTION 14. (1) A person may not intentionally make a false statement in a report or refund application or when supplying other information required under section 10 or 12 of this 2013 Act.

(2) A person may not intentionally apply for, receive or attempt to receive a refund under section 11 or 12 of this 2013 Act to which the person is not entitled.

(3) A person may not intentionally aid or assist another person to violate any provision of section 10, 11 or 12 of this 2013 Act.

(4) A person who violates any provision of this section commits a Class A violation.

SECTION 15. (1) Upon application on a form prescribed by the Department of Transportation, the department shall issue an emblem to the registered owner of a subject vehicle to show that the use of fuel in the subject vehicle is exempt from taxation under ORS 319.510 to 319.880.

(2) An emblem issued under this section shall be displayed:

(a) In a conspicuous place on the subject vehicle; and

(b) Only upon the subject vehicle with respect to which it is issued.

SECTION 16. ORS 319.550 is amended to read:

319.550. (1) **Except as provided in this section**, a person may not use fuel in a motor vehicle in this state unless the person holds a valid user's license. [*except that:*]

[(1)] (2) A nonresident may use fuel in a motor vehicle not registered in Oregon for a period not exceeding 30 days without obtaining a user's license or the emblem [*provided in*] **issued under** ORS 319.600, if, for all fuel used in a motor vehicle in this state, the nonresident pays to a seller, at the time of the sale, the tax provided in ORS 319.530.

[(2)] (3) A user's license is not required for a person who uses fuel in a motor vehicle with a combined weight of 26,000 pounds or less if, for all fuel used in a motor vehicle in this state, the person pays to a seller, at the time of the sale, the tax provided in ORS 319.530.

[(3)] (4)(a) A user's license is not required for a person who uses fuel as described in ORS 319.520 (7) in the vehicles specified in [*subsection (4) of this section*] **this subsection** if the person pays to a seller, at the time of the sale, the tax provided in ORS 319.530.

[(4)] (b) [*Subsection (3) of this section*] **Paragraph (a) of this subsection** applies to the following vehicles:

[(a)] (A) Motor homes as defined in ORS 801.350.

[(b)] (B) Recreational vehicles as defined in ORS 446.003.

(5) A user's license is not required for a person who uses fuel in a motor vehicle:

(a) **Metered use by which is subject to the per-mile road usage charge imposed under section 3 of this 2013 Act; and**

(b) **That also uses fuels subject to ORS 319.510 to 319.880.**

SECTION 17. ORS 319.665 is amended to read:

319.665. (1) The seller of fuel for use in a motor vehicle shall collect the tax provided by ORS 319.530 at the time the fuel is sold, unless one of the following situations applies:

(a) The vehicle into which the seller delivers or places the fuel bears a valid permit or user's emblem issued by the Department of Transportation.

(b) The fuel is dispensed at a nonretail facility, in which case the seller shall collect any tax owed at the same time the seller collects the purchase price from the person to whom the fuel was dispensed at the nonretail facility. A seller is not required to collect the tax under this paragraph from a person who certifies to the seller that the use of the fuel is exempt from the tax imposed under ORS 319.530.

(c) A cardlock card is used for purchase of the fuel at an attended portion of a retail facility equipped with a cardlock card reader, in which case the cardlock card issuer licensed in this state is responsible for collecting and remitting the tax unless the person making the purchase certifies to the seller that the use of the fuel is exempt from the tax imposed under ORS 319.530.

(d) Metered use by the vehicle is subject to the per-mile road usage charge imposed under section 3 of this 2013 Act.

(2) If a cardlock card is used for purchase of fuel at an attended portion of a retail facility equipped with a cardlock card reader, the seller at the retail facility may deduct fuel purchases made with a cardlock card from the seller's retail transactions if the seller provides the department with the following information:

(a) A monthly statement from a cardlock card issuer that details the cardlock card purchases at the retail facility; and

(b) A listing of cardlock card issuers and gallons of fuel purchased at the retail facility by the issuers' customers.

(3) The department shall supply each seller of fuel for use in a motor vehicle with a chart which sets forth the tax imposed on given quantities of fuel.

SECTION 18. ORS 319.831 is amended to read:

319.831. (1) If a user obtains fuel for use in a motor vehicle in this state and pays the use fuel tax on the fuel obtained, the user may apply for a refund of that part of the use fuel tax paid which is applicable to use of the fuel to propel a motor vehicle:

(a) In another state, if the user pays to the other state an additional tax on the same fuel;

(b) Upon any road, thoroughfare or property in private ownership;

(c) Upon any road, thoroughfare or property, other than a state highway, county road or city street, for the removal of forest products, as defined in ORS 321.005, or the products of such forest products converted to a form other than logs at or near the harvesting site, or for the construction or maintenance of the road, thoroughfare or property, pursuant to a written agreement or permit authorizing the use, construction or maintenance of the road, thoroughfare or property, with or by:

(A) An agency of the United States;

(B) The State Board of Forestry;

(C) The State Forester; or

(D) A licensee of an agency named in subparagraph (A), (B) or (C) of this paragraph;

(d) By an agency of the United States or of this state or of any county, city or port of this state on any road, thoroughfare or property, other than a state highway, county road or city street;

(e) By any incorporated city or town of this state;

(f) By any county of this state or by any road assessment district formed under ORS 371.405 to 371.535;

(g) Upon any county road for the removal of forest products as defined in ORS 321.005, or the products of such forest products converted to a form other than logs at or near the harvesting site, if:

(A) Such use upon the county road is pursuant to a written agreement entered into with, or to a permit issued by, the State Board of Forestry, the State Forester or an agency of the United States,

authorizing such user to use such road and requiring such user to pay for or to perform the construction or maintenance of the county road;

(B) The board, officer or agency that entered into the agreement or granted the permit, by contract with the county court or board of county commissioners, has assumed the responsibility for the construction or maintenance of such county road; and

(C) Copies of the agreements or permits required by subparagraphs (A) and (B) of this paragraph are filed with the Department of Transportation;

(h) By a school district or education service district of this state or the contractors of a school district or education service district, for those vehicles being used to transport students;

(i) By a rural fire protection district organized under the provisions of ORS chapter 478;

(j) By any district, as defined in ORS chapter 198, that is not otherwise specifically provided for in this section; or

(k) By any state agency, as defined in ORS 240.855.

(L) In metered use subject to the per-mile road usage charge imposed under section 3 of this 2013 Act if the user has paid the charge.

(2) An application for a refund under subsection (1) of this section shall be filed with the department within 15 months after the date the use fuel tax, for which a refund is claimed, is paid.

(3) The application for a refund provided by subsection (1) of this section shall include a signed statement by the applicant indicating the amount of fuel for which a refund is claimed, and the way in which the fuel was used which qualifies the applicant for a refund. If the fuel upon which the refund is claimed was obtained from a seller to whom the use fuel tax was paid, the application shall be supported by the invoices which cover the purchase of the fuel. If the applicant paid the use fuel tax directly to the department, the applicant shall indicate the source of the fuel and the date it was obtained.

(4) The department may require any person who applies for a refund provided by subsection (1) of this section to furnish a statement, under oath, giving the person's occupation, description of the machines or equipment in which the fuel was used, the place where used and such other information as the department may require.

(5) The department may provide by rule that a refund under subsection (1)(L) of this section be granted as a credit against future per-mile road usage charges incurred by the applicant under section 3 of this 2013 Act.

SECTION 19. ORS 319.280 is amended to read:

319.280. (1) Any person who has paid any tax on motor vehicle fuel levied or directed to be paid by ORS 319.010 to 319.430 either directly by the collection of the tax by the vendor from the consumer, or indirectly by adding the amount of the tax to the price of the fuel and paid by the consumer, shall be reimbursed and repaid the amount of such tax paid,

except as provided in ORS 319.290 to 319.330, if such person has:

(a) Purchased and used such fuel for the purpose of operating or propelling a stationary gas engine, a tractor or a motor boat, if the motor boat is used for commercial purposes at any time during the period for which the refund is claimed;

(b) Purchased and used such fuel for cleaning or dyeing or other commercial use, except when used in motor vehicles operated upon any highway;

(c) Purchased and exported such fuel from this state, in containers other than fuel supply tanks of motor vehicles, provided that the person:

(A) Exports the motor vehicle fuel from this state to another state, territory or country, not including a federally recognized Indian reservation located wholly or partially within the borders of this state, where the motor vehicle fuel is unloaded; and

(B) Has a valid motor vehicle fuel dealer's license or its equivalent issued by the state, territory or country to which the fuel is exported and where it is unloaded;

(d) Purchased and exported such fuel in the fuel supply tank of a motor vehicle and has used such fuel to operate the vehicle upon the highways of another state, if the user has paid to the other state a similar motor vehicle fuel tax on the same fuel, or has paid any other highway use tax the rate for which is increased because such fuel was not purchased in, and the tax thereon paid, to such state; [or]

(e) Purchased and used such fuel for small engines that are not used to propel motor vehicles on highways, including but not limited to those that power lawn mowers, leaf blowers, chain saws and similar implements[.]; or

(f) Purchased and used such fuel for operating a motor vehicle the metered use of which is subject to the per-mile road usage charge imposed under section 3 of this 2013 Act, if the person has paid the charge.

(2) When a motor vehicle with auxiliary equipment uses fuel and there is no auxiliary motor for such equipment or separate tank for such a motor, a refund may be claimed and allowed as provided by subsection [(4)] (5) of this section, except as otherwise provided by this subsection, without the necessity of furnishing proof of the amount of fuel used in the operation of the auxiliary equipment. The person claiming the refund may present to the Department of Transportation a statement of the claim and be allowed a refund as follows:

(a) For fuel used in pumping aircraft fuel, motor vehicle fuel, fuel or heating oils or other petroleum products by a power take-off unit on a delivery truck, refund shall be allowed claimant for tax paid on fuel purchased at the rate of three-fourths of one gallon for each 1,000 gallons of petroleum products delivered.

(b) For fuel used in operating a power take-off unit on a cement mixer truck or on a garbage truck, claimant shall be allowed a refund of 25 percent of the tax paid on all fuel used in such a truck.

(3) When a person purchases and uses motor vehicle fuel in a vehicle equipped with a power take-off unit, a refund may be claimed for fuel used to operate the power take-off unit provided the vehicle is equipped with a metering device approved by the department and designed to operate only while the vehicle is stationary and the parking brake is engaged; the quantity of fuel measured by the metering device shall be presumed to be the quantity of fuel consumed by the operation of the power take-off unit.

(4)(a) The department may provide by rule that a refund under subsection (1)(f) of this section be granted as a credit against future per-mile road usage charges incurred by the person under section 3 of this 2013 Act.

(b)(A) The department may provide by rule for refund thresholds that are met by aggregating refund amounts or by estimating motor vehicle fuel tax refunds by vehicle type, at the option of the person claiming the refund.

(B) If the person claiming the refund opts for an estimated refund based on vehicle type, the requirement under subsection (5) of this section that the person claiming the refund must present original invoices or reasonable facsimiles showing motor vehicle fuel purchases does not apply.

(4) (5) Before any such refund may be granted, the person claiming such refund must present to the department a statement, accompanied by the original invoices, or reasonable facsimiles approved by the department, showing such purchases; provided that in lieu of original invoices or facsimiles, refunds submitted under subsection (1)(d) of this section shall be accompanied by information showing source of the fuel used and evidence of payment of tax to the state in which the fuel was used. The statement shall be made over the signature of the claimant, and shall state the total amount of such fuel for which the claimant is entitled to be reimbursed under subsection (1) of this section. The department upon the presentation of the statement and invoices or facsimiles, or other required documents, shall cause to be repaid to the claimant from the taxes collected on motor vehicle fuel such taxes so paid by the claimant.

PENALTIES

SECTION 20. Section 21 of this 2013 Act is added to and made a part of the Oregon Vehicle Code.

SECTION 21. (1) A person commits the offense of tampering with a vehicle metering system if the person:

(a) With the intent to defraud, operates a motor vehicle that is subject to the per-mile road usage charge imposed under section 3 of this 2013 Act on a highway knowing that the

vehicle metering system is disconnected or non-functional.

(b) Replaces, disconnects or resets the vehicle metering system of a motor vehicle that is subject to the per-mile road usage charge imposed under section 3 of this 2013 Act with the intent of reducing the metered use recorded by the vehicle metering system.

(2) This section does not apply to a person who is servicing, repairing or replacing a vehicle metering system.

(3) As used in this section, "vehicle metering system" means a system used to record the metered use by a motor vehicle for the purpose of complying with the reporting requirements under section 10 of this 2013 Act.

(4) Tampering with a vehicle metering system is a Class A traffic violation.

CONFORMING AMENDMENTS

SECTION 22. ORS 366.505 is amended to read: 366.505. (1) The State Highway Fund shall consist of:

(a) All moneys and revenues derived under and by virtue of the sale of bonds, the sale of which is authorized by law and the proceeds thereof to be dedicated to highway purposes.

(b) All moneys and revenues accruing from the licensing of motor vehicles, operators and chauffeurs.

(c) Moneys and revenues derived from any tax levied upon gasoline, distillate, liberty fuel or other volatile and inflammable liquid fuels, except moneys and revenues described in ORS 184.642 (2)(a) that become part of the Department of Transportation Operating Fund.

(d) Moneys and revenues derived from the road usage charges imposed under section 3 of this 2013 Act.

(d) (e) Moneys and revenues derived from or made available by the federal government for road construction, maintenance or betterment purposes.

(e) (f) All moneys and revenues received from all other sources which by law are allocated or dedicated for highway purposes.

(2) The State Highway Fund shall be deemed and held as a trust fund, separate and distinct from the General Fund, and may be used only for the purposes authorized by law and is continually appropriated for such purposes.

(3) Moneys in the State Highway Fund may be invested as provided in ORS 293.701 to 293.820. All interest earnings on any of the funds designated in subsection (1) of this section shall be placed to the credit of the highway fund.

SECTION 23. ORS 367.802 is amended to read: 367.802. As used in ORS 367.800 to 367.824:

(1) "Agreement" means a written agreement, including but not limited to a contract, for a trans-

portation project that is entered into under ORS 367.806.

(2) "Private entity" means any entity that is not a unit of government, including but not limited to a corporation, partnership, company, nonprofit organization or other legal entity or a natural person.

(3) "Transportation project" or "project" means any proposed or existing undertaking that facilitates:

(a) Any mode of transportation in this state [or that facilitates];

(b) The collection of taxes and fees as an alternative to the motor vehicle fuel taxes imposed under ORS 319.020 and 319.530[.]; or

(c) **The collection of the per-mile road usage charge imposed under section 3 of this 2013 Act.**

(4) "Unit of government" means any department or agency of the federal government, any state or any agency, office or department of a state, any city, county, district, commission, authority, entity, port or other public corporation organized and existing under statutory law or under a voter-approved charter and any intergovernmental entity created under ORS 190.003 to 190.130, 190.410 to 190.440 or 190.480 to 190.490.

SECTION 24. ORS 367.804 is amended to read:

367.804. (1) The Department of Transportation shall establish the Oregon Innovative Partnerships Program for the planning, acquisition, financing, development, design, construction, reconstruction, replacement, improvement, maintenance, management, repair, leasing and operation of transportation projects.

(2) The goals of the **Oregon Innovative Partnerships** Program are to:

(a) Develop an expedited project delivery process;

(b) Maximize innovation; and

(c) Develop partnerships with private entities and units of government.

(3) As part of the program established under this section[.]:

(a) The department may:

[a] (A) Solicit concepts or proposals for transportation projects from private entities and units of government.

[b] (B) Accept unsolicited concepts or proposals for transportation projects from private entities and units of government.

[c] (C) Evaluate the concepts or proposals received under this subsection and select potential projects based on the concepts or proposals. The evaluation under this [paragraph] **subparagraph** shall include consultation with any appropriate local government, metropolitan planning organization or area commission on transportation.

[d] (D) Charge an administrative fee for the evaluation in an amount determined by the department.

(b) **The department shall enter into agreements to undertake transportation projects described in ORS 367.806 (2).**

(4) Following an evaluation by the department of concepts or proposals [submitted] **the department receives** under subsection (3)(a) of this section, and the selection of potential transportation projects, the department may negotiate and enter into the agreements described in ORS 367.806 for implementing the selected transportation projects.

(5) Except as provided in subsection (6) of this section:

(a) Information related to a transportation project proposed under ORS 367.800 to 367.824, including but not limited to the project's design, management, financing and other details, is exempt from disclosure under ORS 192.410 to 192.505 until:

(A) The department shares the information with a local government, metropolitan planning organization or area commission on transportation under subsection [(3)(c)] **(3)(a)(C)** of this section; or

(B) The department completes its evaluation of the proposed project and has selected the proposal for negotiation of an agreement.

(b) After the department has either shared the information described in paragraph (a) of this subsection with a local government, metropolitan planning organization or area commission on transportation, or has completed its evaluation of the proposed project, the information is subject to disclosure under ORS 192.410 to 192.505.

(6) Sensitive business, commercial or financial information that is not customarily provided to business competitors that is submitted to the department in connection with a transportation project under ORS 367.800 to 367.824 is exempt from disclosure under ORS 192.410 to 192.505 until the information is submitted to the Oregon Transportation Commission in connection with its review and approval of the transportation project under ORS 367.806.

(7) The department may, in connection with the evaluation of concepts or proposals for transportation projects, consider 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.

(8) The department and any other unit of government may expend, out of any funds available for the purpose, such moneys as may be necessary for the evaluation of concepts or proposals for transportation projects and for negotiating agreements for transportation projects under ORS 367.806. The department or other unit of government determines are needed for the purposes of doing the evaluation and negotiation. Expenses incurred by the department or other unit of government under this subsection prior to the issuance of transportation project revenue bonds or other financing shall be paid by the department or other unit of government, as applicable, and charged to the appropriate transportation project. The department or other unit of government shall keep records and accounts showing each amount so charged. Upon the sale of transportation

project revenue bonds or upon obtaining other financing for any transportation project, the funds expended by the department or other unit of government under this subsection in connection with the project shall be repaid to the department or the unit of government from the proceeds of the bonds or other financing, as allowed by applicable law.

SECTION 25. ORS 367.806 is amended to read:

367.806. (1) As part of the **Oregon Innovative Partnerships 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) As part of the Oregon Innovative Partnerships Program established under ORS 367.804, the department shall enter into agreements to undertake transportation projects the subjects of which include the application of technology standards to determine whether to certify technology, the collection of metered use data, tax processing and account management, as these subjects relate to the operation of a road usage charge system pursuant to sections 2 to 15 of this 2013 Act.

[(2)] **(3)** 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)] **(4)** 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)] **(5)** Except for ORS 383.015, 383.017 (1), (2), (3) and (5) and 383.019, the provisions of ORS 383.003 to 383.075 apply to any tollway project entered into under ORS 367.800 to 367.824.

[(5)] **(6)** 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)] **(7)(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)] **(8)(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)] **(7)** of this section.

[(8)] **(9)** 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)] (7) of this section are subject to disclosure under ORS 192.410 to 192.505.

[(9)] (10) 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 26. ORS 305.410 is amended to read:

305.410. (1) Subject only to the provisions of ORS 305.445 relating to judicial review by the Supreme Court and to subsection (2) of this section, the tax court shall be the sole, exclusive and final judicial authority for the hearing and determination of all questions of law and fact arising under the tax laws of this state. For the purposes of this section, and except to the extent that they preclude the imposition of other taxes, the following are not tax laws of this state:

(a) ORS chapter 577 relating to Oregon Beef Council contributions.

(b) ORS 576.051 to 576.455 relating to commodity commission assessments.

(c) ORS chapter 477 relating to fire protection assessments.

(d) ORS chapters 731, 732, 733, 734, 737, 742, 743, 743A, 744, 746, 748 and 750 relating to insurance company fees and taxes.

(e) ORS chapter 473 relating to liquor taxes.

(f) ORS chapter 583 relating to milk marketing, production or distribution fees.

(g) ORS chapter 825 relating to motor carrier taxes.

(h) ORS chapter 319 relating to motor vehicle and aircraft fuel taxes **and the road usage charges imposed under section 3 of this 2013 Act.**

(i) ORS title 59 relating to motor vehicle and motor vehicle operators' license fees and ORS title 39 relating to boat licenses.

(j) ORS chapter 578 relating to Oregon Wheat Commission assessments.

(k) ORS chapter 462 relating to racing taxes.

(L) ORS chapter 657 relating to unemployment insurance taxes.

(m) ORS chapter 656 relating to workers' compensation contributions, assessments or fees.

(n) ORS 311.420, 311.425, 311.455, 311.650, 311.655 and ORS chapter 312 relating to foreclosure of real and personal property tax liens.

(o) Sections 15 to 22, 24 and 29, chapter 736, Oregon Laws 2003, relating to long term care facility assessments.

(2) The tax court and the circuit courts shall have concurrent jurisdiction to try actions or suits to determine:

(a) The priority of property tax liens in relation to other liens.

(b) The validity of any deed, conveyance, transfer or assignment of real or personal property under ORS 95.060 and 95.070 (1983 Replacement Part) or 95.200 to 95.310 where the Department of Revenue

has or claims a lien or other interest in the property.

(3) Subject only to the provisions of ORS 305.445 relating to judicial review by the Supreme Court, the tax court shall be the sole, exclusive and final judicial authority for the hearing and determination of all questions of law and fact concerning the authorized uses of the proceeds of bonded indebtedness described in section 11 (11)(d), Article XI of the Oregon Constitution.

(4) Except as permitted under section 2, amended Article VII, Oregon Constitution, this section and ORS 305.445, no person shall contest, in any action, suit or proceeding in the circuit court or any other court, any matter within the jurisdiction of the tax court.

TECHNICAL PROVISIONS

SECTION 27. (1) Sections 3 to 5, 10 to 15 and 21 of this 2013 Act and the amendments to ORS 319.280, 319.550, 319.665, 319.831 and 366.505 by sections 16 to 19 and 22 of this 2013 Act become operative on July 1, 2015.

(2) The Department of Transportation may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the department to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the department by sections 2 to 15 and 21 of this 2013 Act and the amendments to ORS 319.280, 319.550, 319.665, 319.831 and 366.505 by sections 16 to 19 and 22 of this 2013 Act.

SECTION 28. The unit captions used in this 2013 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 2013 Act.

MULTIJURISDICTIONAL AGREEMENTS

SECTION 29. The Department of Transportation may enter into agreements with other state departments of transportation, the federal government and Canadian provinces for the purposes of:

(1) Conducting joint research relating to road usage charges and development programs on a multistate basis;

(2) Furthering the development and operation of single state or multistate road usage charge pilot programs;

(3) Sharing costs incurred in conducting the research described in subsection (1) of this section; and

(4) Developing a program for stakeholder outreach and communications with respect to road usage charges.

SECTION 30. For the biennium beginning July 1, 2013, expenditures by the Department of Transportation from funds received from other states, the federal government, Canadian provinces or the government of Canada for the purposes described in section 29 of this 2013 Act are not limited.

EXPENDITURE LIMITATION

SECTION 31. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 3 (7), chapter 556, Oregon Laws 2013 (Enrolled Senate Bill 5544), for the biennium beginning July 1, 2013, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and federal funds received as reimbursement from the United States Department of Transportation, but excluding lottery funds and federal funds not described in this section, collected or received by the Department of Transportation, is increased by \$2,828,339 for the road usage charge program established by sections 2 to 15 of this 2013 Act.

RAIL PROXIMATE REAL PROPERTY TRANSFERS

SECTION 32. ORS 271.310 is amended to read:

271.310. (1) Except as provided in subsection (2) of this section and subject to subsection (3) of this section, whenever any political subdivision possesses or controls real property not needed for public use, or whenever the public interest may be furthered, a political subdivision may sell, exchange, convey or lease for any period not exceeding 99 years all or any part of the political subdivision's interest in the property to a governmental body or private individual or corporation. The consideration for the transfer or lease may be cash or real property, or both.

(2) If the ownership, right or title of the political subdivision to any real property set apart by deed, will or otherwise for a burial ground or cemetery, or for the purpose of interring the remains of deceased persons, is limited or qualified or the use of the real property is restricted, whether by dedication or otherwise, the political subdivision may, after the county court or governing body thereof has first declared by resolution that the real property is not needed for public use, or that the sale, exchange, conveyance or lease of the real property will further the public interest, file a complaint in the circuit court for the county in which the real property is located against all persons claiming any right, title or interest in the real property, whether the interest be contingent, conditional or otherwise, for authority to sell, exchange, convey or lease all or any part of the real property. The resolution is prima facie evidence that the real property is not needed for public use, or that the sale, exchange, conveyance

or lease will further the public interest. The action shall be commenced and prosecuted to final determination in the same manner as an action not triable by right to a jury. The complaint shall contain a description of the real property, a statement of the nature of the restriction, qualification or limitations, and a statement that the defendants claim some interest therein. The court shall make such judgment as it shall deem proper, taking into consideration the limitation, qualifications or restrictions, the resolution, and all other matters pertinent thereto. Neither costs nor disbursements may be recovered against any defendant.

(3)(a) At least 30 days before listing or placing real property for sale, exchange or conveyance, a political subdivision shall notify the Department of Transportation of its intent to sell, exchange or convey the real property if the real property is within 100 feet of a railroad right of way or is within 500 feet of an at-grade rail crossing.

(b) The department shall share the advance notice with private providers of rail service that might be interested in obtaining the real property to facilitate the current delivery or future expansion of rail service. Notwithstanding the benefit of receiving advance notice, a private provider of rail service may not obtain or enter into negotiations to obtain the real property until the political subdivision offers the real property for sale, exchange, conveyance or lease to the general public. As used in this paragraph, "general public" includes private providers of rail service.

(c) Paragraph (a) of this subsection does not apply:

(A) To light rail corridors and any other rail corridors excluded by rule of the department;

(B) If the proposed sale, exchange or conveyance of the real property is to a provider of rail service; or

(C) To the proposed sale, exchange or conveyance of easements.

(d) The department shall adopt rules to implement this subsection. The rules may include provisions that:

(A) Identify rail corridors within which a political subdivision is not required to provide notice of intention to sell, exchange or convey real property within 100 feet of a railroad right of way or within 500 feet of an at-grade rail crossing.

(B) Establish a process for providing advance notice to private providers of rail service.

(4) Unless the governing body of a political subdivision determines under subsection (1) of this section that the public interest may be furthered, real property needed for public use by any political subdivision owning or controlling the property may not be sold, exchanged, conveyed or leased under the authority of ORS 271.300 to 271.360, except that it may be exchanged for property that is of equal or superior useful value for public use. Any such property not immediately needed for public use may be leased if, in the discretion of the governing body having control of the property, the property will not

be needed for public use within the period of the lease.

(5) The authority to lease property granted by this section includes authority to lease property not owned or controlled by the political subdivision at the time of entering into the lease. A lease under this subsection shall be conditioned upon the subsequent acquisition of the interest covered by the lease.

EFFECTIVE DATE

SECTION 33. This 2013 Act takes effect on the 91st day after the date on which the 2013 regular session of the Seventy-seventh Legislative Assembly adjourns sine die.

Approved by the Governor August 14, 2013
Filed in the office of Secretary of State August 14, 2013
Effective date October 7, 2013