Chapter 385

Tunnels

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385.010 Definitions. As used in this chapter:

(1) "Commission" means the Tunnel Commission, or, if such commission is abolished, any board or officer succeeding to the principal functions thereof or to which or whom the powers given by this chapter to such commission are given by law.

(2) "Tunnel" includes all property, rights and franchises relating thereto, including approaches.

385.020 Tunnel Commission; appointment, term, compensation and bond of members. (1) There is created a commission to be known as the Tunnel Commission and to consist of three members appointed by the Governor.

(2) Each member of the commission shall hold office for four years subject to removal by the appointive power. Before the expiration of the term of a commissioner the Governor shall appoint his successor to assume his duties on April 1 next following the appointment. In case of a vacancy for any cause the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) Each member of the commission shall serve without pay, but shall be allowed his actual traveling and other necessary expenses incurred while in the performance of the duties of his office.

(4) Each member of the commission shall give a good and sufficient bond to the state in the sum of $5,000, conditioned upon the faithful performance of the duties of his office. The bond shall be in form approved by the Attorney General and shall be filed with the Secretary of State. The premium shall be paid out of any funds subject to expenditure by the commission.

385.030 Meeting and qualification of commission; election of officers; seal. (1) The commission shall, as soon as practicable after being appointed, meet at the call of the Governor and qualify by the election of one of its members as chairman and furnishing the bond provided in subsection (4) of ORS 385.020.

(2) The commission shall appoint a secretary, define his duties and fix his compensation.

(3) The commission shall have a seal which shall be attached to or impressed on all contracts, agreements and documents to which the commission is a party. The seal shall be in the custody of the secretary.

385.040 Quorum to transact business. A majority of the commission shall constitute a quorum to transact business, and the act or decision of any two of the commissioners shall be deemed the act or decision of the commission. No vacancy shall impair the right of the remaining commissioners to exercise all the powers of the commission.

385.050 Construction of tunnels. (1) The commission may construct, whenever it deems such construction expedient, solely by means of or with the proceeds of the tunnel revenue bonds authorized by ORS 385.100, any tunnel of sufficient width and height that will provide for two or four lane traffic within or without, or both, the corporate limits of any city or town which will connect with the state highway system.

(2) The commission may prepare the necessary and proper plans and specifications, select the location, determine the size, type and method of construction, make the necessary estimates of the probable cost of construction and the acquisition of the necessary land and rights of way, franchises, easements and other interests in land deemed necessary and cause a survey and maps to be made of all such lands, rights of way, franchises, easements and other interests.

(3) The commission and its agents and employes may enter upon lands mentioned in subsection (2) of this section, notwithstanding any interests therein or in the structures thereupon, for the purpose of making surveys and maps.

385.060 Purchasing land for tunnel construction. The commission may purchase, solely from funds provided under the authority of this chapter, such lands, structures, rights of way, franchises, easements and other interests in lands deemed necessary for the construction of any tunnel, upon such terms and at such prices as may be considered by it to be reasonable which can be agreed upon between it and the owner thereof, title thereto to be taken in the name of the commission.

385.070 Condemning property for tunnel construction. (1) Whenever it becomes necessary, in the opinion of the commission, to condemn any property for the purpose of constructing any tunnel which the commission determines to construct or to secure a right of way leading to any such tunnel or its approaches, the commission may con-

demn any interest, franchise, right or privilege, land or improvement which may in its opinion be necessary for any such purpose, in the manner provided by law for the acquisition by the state of property for highway purposes. For such purposes the commission may acquire such property by the exercise of the power of eminent domain. In the exercise of such power any suit or action shall be prosecuted in the name of the commission.

(2) Title to property condemned shall be taken in the name of the commission.

(3) The state shall be under no obligation to accept and pay for any property condemned and shall in no event pay for such property except from the funds provided by this chapter.

(4) In any proceedings to condemn, such orders shall be made by the court having jurisdiction of the suit, action or proceedings as may be just to the commission and to the owners of property to be condemned.

(5) A bond or other surety may be required by the court securing owners of property to be condemned against any loss or damage to be sustained by reason of the failure of the commission to accept and pay for the property.

385.080 Contracting for tunnel construction. Tunnels shall be constructed by contract, except such parts thereof costing less than $5,000, which the commission, in its judgment, may except from this requirement. No contract or agreement with any contractor for construction exceeding $5,000 in amount shall be made without advertising for bids. Bids shall be opened publicly and an award made to the best bidder. The commission may reject any and all bids.

385.090 Cost of tunnel. The cost of a tunnel embraces, among other proper things:

(1) The cost of all land, property, rights and franchises deemed necessary for the construction, maintenance and operation.

(2) Interest upon bonds prior to and during construction and for one year thereafter.

(3) Engineering and traffic estimates.

(4) Such other expenses as may be necessary, proper or incident to the acquisition of property, construction and performance of things required or permitted by this chapter in connection therewith or with the financing authorized by this chapter.

385.100 Tunnel bonds; formal requirements and conditions. (1) The commission may, by virtue of a resolution, pay the cost of any tunnel by the issuance of tunnel revenue bonds.

(2) The tunnel revenue bonds mentioned in subsection (1) of this section shall:

(a) Have all the qualities of, and hereby are declared to be, negotiable instruments under the laws of the state.

(b) Bear interest at not more than six percent per year, payable semiannually.

(c) Mature in not more than 20 years from their dates, but may be made redeemable at the option of the commission, to be exercised by the commission, at not more than the par value thereof and a premium of five percent, under such terms and conditions as the commission fixes prior to the issuance of the bonds.

(d) Be of a form determined by the commission, including interest coupons to be attached thereto.

(e) Be signed by the commission, by the chairman and secretary, under the seal of the commission, and the coupons attached shall bear the facsimile signature of the secretary. In case any of the officers whose signatures appear on the bonds or coupons cease to be such officers before the delivery of the bonds, the signatures shall nevertheless be valid and sufficient for all purposes the same as if the officers had remained in office until the delivery.

(f) Bear on their faces, printed in bold type, these words: "Neither the principal nor interest of this bond is an obligation of the State of Oregon" and "Both the principal and interest of this bond are payable solely out of tunnel tolls or tunnel revenues."

(g) Be of denominations fixed by the commission.

(3) The tunnel revenue bonds mentioned in subsection (1) of this section may be issued without any other proceedings or the happenings of any other conditions or things than those proceedings, conditions and things specified and required by this chapter or the Oregon Constitution.

385.110 Sale of tunnel bonds; registration. (1) The commission shall sell the tunnel revenue bonds in such manner as it may determine, but in no event shall the bonds be sold for less than par. The bonds shall be sold for cash.

(2) The commission may provide for the registration of the tunnel revenue bonds in

the name of the owner as to principal alone and as to both principal and interest under such terms and conditions as the commission may determine.

385.120 Payment of tunnel bond principal and interest. The principal and interest of tunnel revenue bonds mentioned in ORS 385.100 is payable solely from the special fund provided therefor by ORS 385.220. Such principal and interest is payable in lawful money at such places within or without the state as the commission determines.

385.130 Purchasing outstanding bonds; cancelation. (1) The commission may use the fund mentioned in ORS 385.220 for the purchase of any of the outstanding tunnel revenue bonds, payable from the fund at the market price, but not exceeding 105 and accrued interest, nor exceeding the price, if any, at which the bonds shall in the same year be redeemable.

(2) All tunnel revenue bonds redeemed or purchased shall be canceled and shall not again be issued.

385.140 Use of tunnel bond proceeds. (1) The proceeds of the tunnel revenue bonds shall be used solely for the payment of the cost of the tunnel for which they are issued, upon claims therefor approved by the commission, except for the payment of interest prior to and during construction and for one year thereafter, which shall be paid without the approval of any officer, and be subject to such further restrictions, if any, as the commission may provide.

(2) If the proceeds of tunnel revenue bonds by error of calculation or otherwise are less than the cost of the tunnel, additional bonds may in like manner be issued to provide the amount of the deficit and, unless otherwise provided in the trust agreement mentioned in ORS 385.170, shall be deemed to be of the same issue and shall be entitled to payment from the same fund, without preference or priority of the bonds first issued for the same tunnel.

(3) If the proceeds of tunnel revenue bonds issued for any tunnel exceed the cost thereof, the surplus shall be paid into the fund mentioned in ORS 385.220 for payment of the principal and interest of the bonds.

385.150 Temporary bonds. Prior to the preparation of definitive bonds, the commission may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the latter.

385.160 Tunnel bonds exempt from taxation. The tunnel revenue bonds mentioned in ORS 385.100 are exempt from taxation by the state or any county or municipality therein.

385.170 Tunnel bond trust agreements; contents. (1) The commission may enter into agreements with any trust company or any bank having the powers of a trust company, either within or outside the state, as trustee for the holders of bonds issued under this chapter, setting forth therein:

(a) Such duties of the commission in respect to the construction, maintenance, operation, repair and insurance of the tunnel for which the bonds are issued, the conservation and application of all moneys, the insurance of moneys on hand or on deposit and the rights and remedies of the trustee and the holders of the bonds, as may be agreed upon with the original purchasers of the bonds.

(b) Provisions restricting the individual right of action of bondholders as is customary in trust agreements respecting bonds and debentures of corporations and protecting and enforcing the rights and remedies of the trustee and the bondholders.

(c) Provisions for approval by the original purchasers of the bonds of the appointment of consulting engineers and of the security given by those who contract to make improvements by any bank or trust company in which the proceeds of bonds or tolls are deposited.

(d) Provision for approval by the consulting engineers of all contracts for improvements.

(2) The agreement may provide:

(a) That the proceeds of the sale of the bonds or the revenues of the tunnel, or both, shall be paid to and be in the custody of such officer, board or depositary, as it may determine upon; and

(b) For the method of disbursement of such moneys with such safeguards and restrictions as the commission may determine.

385.180 Expense of trust agreement. All expenses incurred in carrying out an agreement mentioned in ORS 385.170 shall be a part of the cost of maintenance, operation and repairs of the tunnel affected by the agreement, except that the part of such

expenses involving services to be rendered prior to the completion of the tunnel shall be a part of the cost of the tunnel.

385.190 Resolutions containing trust agreement provisions. Regardless of whether the trust agreement is made, all the agreement provisions authorized by ORS 385.170, with the exception of the provisions for restricting the individual right of action of bondholders and for protecting and enforcing the rights and remedies of the trustee, may be contained in resolutions adopted by the commission before the issuance of the bonds.

385.200 Employment and compensation of employes. The commission may employ engineering, architectural and construction experts, inspectors, attorneys and such other employes as may be necessary in its judgment, all of whom shall do such work as the commission directs. The commission shall fix the compensation of such employes. All salaries and compensation shall be paid solely from funds provided under the authority of this chapter.

385.210 Powers and duties of commission generally. (1) The commission:

(a) Shall properly maintain, repair, operate, manage and control the tunnels constructed.

(b) Shall fix the rates of tolls.

(c) Shall establish bylaws, rules and regulations for the use and operation of the tunnels.

(d) May make and enter into all contracts or agreements necessary and incidental to the performance of its duties and the execution of its powers under this chapter.

(e) Has such powers, in addition to those enumerated, as may be necessary to carry out the provisions of this chapter.

(2) The commission shall not proceed to exercise or carry out any authority or power given it by this chapter to bind the commission beyond the extent to which money is provided under this chapter.

385.220 Tunnel tolls; toll fund. (1) Tolls shall be fixed, charged and collected for passage through the tunnels and shall be so fixed and adjusted in respect to the aggregate of tolls from each tunnel for which bonds are issued, as to:

(a) Provide a fund sufficient to pay the principal and interest of the bonds issued for the tunnels and any premium permitted by paragraph (c) of subsection (2) of ORS 385.100 to be paid for the retirement of the bonds before maturity by call or purchase; and

(b) Provide an additional fund to pay the cost of maintaining, repairing and operating the tunnel.

(2) These tolls, except such part as is necessary to pay the cost of maintaining, repairing and operating during any period in which such cost is not otherwise provided for, during which period, if any, the tolls may be reduced accordingly, shall be placed in a special fund pledged to and charged with the payment of the bonds and the interest thereon.

385.230 Cessation of tolls. When the bonds issued for any tunnel and the interest thereon have been paid, or when a sufficient sum has been provided for the payment thereof and shall continue to be held for that purpose, tolls for the use of the tunnel shall cease, except for the cost of maintaining, repairing and operating. Thereafter and as long as the cost of maintaining, repairing and operating the tunnel is provided for through means other than tolls, no tolls shall be charged for the use thereof and the tunnel shall be free.

385.240 No additional proceedings required. It is not necessary to secure from any officer or board not named in this chapter any approval, consent, certificate or finding, to hold an election or to take any proceedings whatever for the construction, maintenance, operation or repair of the tunnels or for the issuance of revenue bonds under this chapter, except such as are prescribed by this chapter.

385.250 Prohibition against state debt. Nothing in this chapter authorizes or permits the incurring of state debt of any kind or nature.

385.260 Liberal construction. This chapter, being necessary for the health, welfare and convenience of the citizens of the state, should be liberally construed to effectuate the purposes thereof.

CHAPTERS 386 TO 395

[Reserved for expansion]