

Senate Bill 407

Sponsored by Senator JOHNSON (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Grants written permission by Department of Transportation for existing unpermitted approach roads under certain circumstances. Provides that written permission qualifies as approach permit.

Requires property owner that has approach permit to be responsible for cost and performance of maintaining approach road.

Directs Department of Transportation to provide report to Access Management Oversight Task Force and Legislative Assembly on number of approach roads that are granted approach permits. Sunsets reporting requirements on January 2, 2016.

Directs department to approve, with conditions, application for change of use of approach even if application is for approach not moving in direction of conformance of highway standards, unless department identifies safety or highway operations concerns.

Limits department's authority to take certain actions relating to highway maintenance and modernization projects and interchange area management plans.

A BILL FOR AN ACT

1
2 Relating to highway access management; creating new provisions; and amending ORS 374.312,
3 374.313, 374.335 and 374.345.

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

5 6 ACCESS MANAGEMENT FOR 7 UNPERMITTED APPROACH ROADS 8

9 **SECTION 1. Sections 2 and 3 of this 2013 Act are added to and made a part of ORS 374.302**
10 **to 374.330.**

11 **SECTION 2. (1) An owner of real property abutting a state highway with an existing ap-**
12 **proach road has the Department of Transportation's written permission for the approach**
13 **road if documentation for a highway project completed by the department shows that the**
14 **approach road was built or rebuilt as part of the project or that the department intended to**
15 **issue an approach permit to the property owner for the approach road.**

16 **(2) An owner of real property abutting a state highway with an approach road that was**
17 **in existence before April 1, 2000, is presumed to have the department's written permission**
18 **for the approach road if there is documentation in any form that shows:**

19 **(a) That the approach road also was in existence before July 16, 1949;**

20 **(b) That the approach road also was in existence before the department accepted juris-**
21 **isdiction of the highway from a city or county; or**

22 **(c) That the approach road was built or rebuilt with the department's knowledge or per-**
23 **mission.**

24 **(3) Subsections (1) and (2) of this section apply only where there is a right of access to**
25 **the state highway.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (4) For approach roads granted written permission under this section, the determination
2 of prior use for the purposes of ORS 374.312 (4) and (5) is the use of the property on the ef-
3 fective date of this 2013 Act.

4 (5) The department may rebut the presumption under subsection (2) of this section by a
5 showing that there is insufficient documentation to determine whether the approach road
6 was built or rebuilt with the department's permission.

7 (6) Except as provided in this section, an approach road built without the department's
8 written permission is subject to closure as provided in ORS 374.307.

9 (7) For purposes of this section and ORS 374.305 and 374.307 and section 3 of this 2013
10 Act, written permission granted by the department for an approach road is deemed to be an
11 approach permit issued by the department under ORS 374.310.

12 **SECTION 3.** An owner of real property abutting a state highway with an existing ap-
13 proach road that is presumed to have written permission under section 2 of this 2013 Act or
14 that has an approach permit under ORS 374.310 is responsible for the cost and performance
15 of maintaining the approach road, in accordance with the Department of Transportation's
16 requirements, from the outermost edge of the highway pavement, shoulder or curb line to
17 the right-of-way line, and shall maintain all portions of the approach road on the owner's
18 property.

19 **SECTION 4.** (1) No later than October 1, 2014, the Department of Transportation shall
20 provide a report to the Access Management Oversight Task Force on the number of ap-
21 proach permits granted under section 2 of this 2013 Act.

22 (2) No later than March 1, 2015, the department shall submit a report to the Legislative
23 Assembly in the manner provided in ORS 192.245 on the number of approach permits granted
24 under section 2 of this 2013 Act.

25 **SECTION 5.** Section 4 of this 2013 Act is repealed on January 2, 2016.

26 **SECTION 6.** ORS 374.313 is amended to read:

27 374.313. (1) If the Department of Transportation closes an approach road for which a permit was
28 issued under ORS 374.310 or section 2 of this 2013 Act or that was allowed by law prior to
29 enactment of statutory permit requirements for approach roads, or if the department denies an ap-
30 plication for an approach road permit submitted pursuant to a grant or reservation of access con-
31 tained in a contract, condemnation judgment or recorded deed, and the closure or denial is not the
32 result of conditions contained in a contract, condemnation judgment, recorded deed or permit, a
33 person holding an interest in the real property benefited by the access or proposed access may file
34 a claim for relief as a contested case under ORS 183.415 to 183.500.

35 (2) Prior to issuing a final order in a contested case under subsection (1) of this section, the
36 Director of Transportation may provide the opportunity for the parties to participate in mediation
37 consistent with the applicable provisions of ORS 36.185 to 36.210. In any alternative dispute resolu-
38 tion proceeding, the director may authorize administrative remedies, including monetary damages
39 or other relief, as determined by the department by rule, to address issues related to real property
40 value, utility or use.

41 (3) In any proceeding under this section, any party may cause an appraisal of the subject prop-
42 erty to be conducted. If the difference in value between a property owner's claim and an offer of
43 monetary compensation by the department is less than \$30,000, the director shall provide a simpli-
44 fied procedure for resolving the claim. The cost of conducting an appraisal may be shared by the
45 parties when a mutually acceptable appraiser can be identified.

SECTION 7. ORS 374.335 is amended to read:

374.335. Where any private road crosses or is crossed by a public highway, the *[driving]* **operation** of a motor vehicle across the public highway or upon the public highway for a distance of not *[to exceed]* **more than** 1,200 feet in the use of the private road is not subject to ORS 811.450, 815.155, 815.160, 815.170, 818.020, 818.060, 818.090, 818.110, 818.160, 818.300, 818.320, 818.340, 818.350, 818.400 and ORS chapter 825, provided such vehicle or vehicle use is:

(1) Subject to a permit issued pursuant to ORS 374.309 or 374.310 *[or a person authorized by such permittee]* **or section 2 of this 2013 Act, or such vehicle or vehicle use is authorized by the owner of the property subject to the permit;** or

(2) A farm tractor or implement of husbandry.

SECTION 8. ORS 374.345 is amended to read:

374.345. The Department of Transportation shall adopt rules regulating the procedures and circumstances under which the department may restrict turning movements onto a state highway from an approach road for which a permit was issued under ORS 374.310 **or section 2 of this 2013 Act** when the restriction is not required by contract, condemnation judgment, recorded deed or permit.

APPLICATION PROCESS FOR APPROACH PERMITS

SECTION 9. ORS 374.312 is amended to read:

374.312. (1) It is the intent of the Legislative Assembly to develop a highway access management system based on objective standards that will balance the economic development objectives of properties abutting state highways with the transportation safety and access management objectives of state highways, in a manner consistent with local transportation system plans and the land uses permitted in the local comprehensive plans acknowledged under ORS chapter 197. The Department of Transportation shall comply with the legislative directives, objective standards and procedures established in this section for the governance of the process for application by and the issuance of approach permits to owners of property abutting the highway and shall adopt rules consistent with this section.

(2) The department shall make its final decision, including resolution of all internal appeals, to grant or deny an approach permit within 120 days of the date the department deems an application for an approach permit complete, unless the applicant and the department agree to an extension.

(3) The department shall make its decision to grant or deny an approach permit based on the provisions of this section, the spacing, channelization and sight distance standards described in ORS 374.311 or the standards and criteria in effect on the date that the application was filed.

(4) A new approach permit for a change of use of an approach is required for a private approach *[if]* **in any of the following circumstances:**

(a)(A)(i) The number of peak hour trips increases by 50 trips or more from that of the property's prior use; or

(ii) The number of trips on a typical day increases by 500 trips or more from that of the property's prior use; and

(B) The increase described in subparagraph (A)(i) or (ii) of this paragraph represents a 20 percent or greater increase in the number of peak hour trips or the number of trips on a typical day from that of the property's prior use[;].

(b) The daily use of a private approach increases by 10 or more vehicles with a gross vehicle weight rating of 26,000 pounds or greater[;].

1 (c) The department demonstrates that safety or operational problems related to the approach
 2 are occurring on a highway as provided in subsection (10)(g) of this section. Any required mitigation
 3 measures shall be limited to addressing the identified safety or operational problems[; or].

4 (d) The approach does not meet the stopping sight distance standards of this section, as meas-
 5 ured in feet, of 10 times the speed limit established in ORS 811.111 or the designated speed posted
 6 under ORS 810.180 for the highway as measured in miles per hour, or 10 times the 85th percentile
 7 speed of the highway where the 85th percentile speed is higher or lower than the speed limit es-
 8 tablished in ORS 811.111 or the designated speed posted under ORS 810.180. The permit holder may
 9 perform a study to determine if the 85th percentile speed is higher or lower than the speed limit
 10 established in ORS 811.111 or the designated speed posted under ORS 810.180. The sight distance
 11 measurement and the study to determine the 85th percentile speed shall be performed according to
 12 published department procedures by or under the supervision of an engineer registered in Oregon.

13 (5)(a) When a change of use of an approach permit is required under subsection (4) of this sec-
 14 tion, the department shall approve an application if the application proposes an approach that moves
 15 in the direction of conforming with the spacing, channelization and sight distance standards de-
 16 scribed in ORS 374.311, subject to consideration of safety and highway operations.

17 (b) Whether the application **proposes an approach that** moves in the direction of conforming
 18 with the spacing, channelization and sight distance standards described in ORS 374.311, while not
 19 posing safety or highway operations concerns, shall be [*established*] **determined** by the department
 20 and the applicant [*using a collaborative process, as established by department*] **in a meeting, under**
 21 **a process established by the department** by rule, that [*is*] **must be** made available to the appli-
 22 cant within 30 days of the date the department determines an application to be complete.

23 (c) Applications that [*are deemed to be*] **the department and the applicant determine are**
 24 moving **the approach** in the direction of conforming with the spacing, channelization and sight
 25 distance standards described in ORS 374.311 do not require separate deviations from those stan-
 26 dards.

27 (d) For the purposes of this subsection, an approach moves in the direction of conforming with
 28 the spacing, channelization or sight distance standards described under ORS 374.311 if one or more
 29 changes are made to the approach that include, but are not limited to:

30 (A) Eliminating or combining existing approaches to the highway resulting in a net reduction
 31 in the number of approaches to the highway.

32 (B) Improving the distance between approaches.

33 (C) Improving the sight distance between approaches.

34 (D) Widening the existing driveways to accommodate truck turning radius requirements.

35 (E) Widening the existing driveways to accommodate additional exit lanes.

36 (F) Narrowing the existing driveways to provide the appropriate number of entry and exit lanes
 37 as required for the property.

38 (G) Developing a throat on the approach entrance to allow for more efficient movement of mo-
 39 torists from the highway.

40 (e) **Notwithstanding any other provision of this section, the department shall approve,**
 41 **with reasonable conditions, an application even if the department and the applicant deter-**
 42 **mine that the application is for an approach not moving in the direction of conforming with**
 43 **the spacing, channelization and sight distance standards described in ORS 374.311, unless the**
 44 **department determines that the approach poses safety or highway operations concerns.**

45 (6) The department shall approve applications **for approaches** that meet the spacing,

1 channelization or sight distance standards described in ORS 374.311 subject only to consideration
2 of safety and highway operations concerns as provided in subsection (10)(g) of this section and the
3 traffic impact analysis requirements described in ORS 374.314.

4 (7) Applications **for approaches** that do not meet the spacing, channelization or sight distance
5 standards described in ORS 374.311 may be approved with deviations from those standards as fol-
6 lows:

7 (a) A request for one or more deviations from the spacing, channelization or sight distance
8 standards described in ORS 374.311 may be included in an application for one or more private ap-
9 proaches that do not meet the standards.

10 (b) Unless waived by the department, a request for a deviation must include a traffic impact
11 analysis provided by the applicant that addresses a request for deviations from the spacing,
12 channelization or sight distance standards described in ORS 374.311 for safety and highway oper-
13 ations.

14 (c) A request for a deviation may be approved based upon a determination by the engineer as-
15 signed by the department to analyze the request for a deviation that the approach adequately ad-
16 dresses the safety and highway operations concerns identified by the department as provided in
17 subsection (10)(g) of this section.

18 (d) Where a speed study prepared by an applicant and agreed to by the department determines
19 that the 85th percentile speed is lower than the current posted speed, the department may grant a
20 deviation from sight distance standards based upon the lower speed determination.

21 (8) If a property has a right of access and there is no means of access to the property other than
22 the state highway, an approach that does not meet the spacing, channelization or sight distance
23 standards described in ORS 374.311 does not need a deviation from the standards if the department
24 and the applicant agree on a location of the approach that optimizes safety, highway operations and
25 site design.

26 (9) Except as otherwise provided in this section, the following procedures apply to all applica-
27 tions for an approach permit:

28 (a) The department shall determine whether an application for an approach permit is complete
29 within 30 days of receipt of the application.

30 (b) The department shall approve an application, approve an application with conditions or deny
31 an application:

32 (A) Within 30 days of the date that the department determines the application to be complete,
33 for applications that meet spacing, channelization or sight distance standards described in ORS
34 374.311; or

35 (B) Within 60 days of the date that the department determines the application to be complete
36 for all other types of applications.

37 (c) The department may impose reasonable conditions to mitigate safety or highway operations
38 concerns identified by the department in its review of the application, as provided in subsection
39 (10)(g) of this section.

40 (d) When the department proposes to deny an approach permit application or approve an appli-
41 cation with conditions, the department shall notify the applicant of its intent and offer the applicant
42 a [*collaborative process*] **meeting** established by the department by rule.

43 (e) If the [*offer of a collaborative process is declined*] **applicant declines the offer of a**
44 **meeting**, the department shall issue its decision in writing with sufficient specificity regarding any
45 safety or highway operations concerns upon which the department's decision is based to allow the

1 applicant to respond.

2 (f) The department's decision shall advise the applicant of the applicant's rights for dispute re-
3 solution processes to resolve issues relating to the department's decision as set forth in ORS 374.355.

4 (10) The following directives apply to all applications for an approach permit:

5 (a) All applications are required to meet sight distance standards described in ORS 374.311 (6)
6 except as otherwise provided in this section or unless a deviation is otherwise approved by the de-
7 partment.

8 (b) Except for highways classified as interstate highways and highways designated as express-
9 ways by the Oregon Transportation Commission, the department may not use the presence of alter-
10 nate access to a property abutting a highway as a basis for denying an approach permit application,
11 except in rural areas where the presence of alternative access is a consideration in determining
12 whether to approve or deny a second or subsequent approach permit application.

13 (c) The department may not impose nontraversable medians as a mitigation measure for ap-
14 proach permit applications unless the department first establishes that no other mitigation measures
15 are effective or available under the circumstances.

16 (d) Mobility standards, established by the department by rule, are not applicable to turning
17 movements from private approaches during the department's review of approach permit applications,
18 except when the ratio of volume to capacity on the proposed private approach is 1.0 or greater.

19 (e) The department may not require an applicant to submit a traffic impact analysis except as
20 provided in ORS 374.314.

21 (f) The department shall utilize an engineer with relevant experience to review and respond to
22 evidence from a qualified expert that is submitted by the applicant.

23 (g) The department shall have the burden of proving any safety or highway operations concerns
24 relied upon in the department's decision to approve an application with conditions or deny an ap-
25 plication. Safety or highway operations concerns that may be applied to the department's permit
26 decisions on applications submitted under this section are limited to one or more of the following
27 unique safety and highway operations concerns:

28 (A) Regular queuing on the highway that impedes turning movements associated with the pro-
29 posed approach.

30 (B) Offset approaches that may create the potential for overlapping left turn movements or
31 competing use of a center turn lane.

32 (C) Insufficient distance for weave movements made by vehicles exiting an approach across
33 multiple lanes in the vicinity of signalized intersections, roads classified by the Oregon Transporta-
34 tion Commission as collectors or arterials and on-ramps or off-ramps.

35 (D) Location of the proposed approach within a highway segment with a crash rate that is 20
36 percent higher than the statewide average for similar highways.

37 (E) Location of the proposed approach within a highway segment listed in the top five percent
38 of locations identified by the safety priority index system developed by the department.

39 (F) Inadequate sight distance from an intersection to the nearest driveway on district highways
40 and regional highways where the speed limit established in ORS 811.111 or the designated speed
41 posted under ORS 810.180 is 50 miles per hour or higher.

42 (11) The department shall use the criteria for determining what constitutes reasonable access
43 as specified in ORS 374.310.

44 (12) The department shall make its decision to grant or deny an approach permit on the record.
45 When the department denies an application or approves an application with conditions, the depart-

1 ment shall issue findings specifying the basis of the decision for the record. The department shall
2 adopt rules specifying the form of the record.

3 (13) The department and a local government may enter into an intergovernmental agreement
4 setting provisions for and allowing the local government to issue approach permits for regional and
5 district state highways. The agreement must provide that permits issued by local governments will
6 be consistent with the highway plan and administrative rules adopted by the department, with state
7 statutes and with the local transportation system plan acknowledged under ORS chapter 197. The
8 department shall adopt rules specifying the circumstances under which authority will be delegated
9 to a local government.

10 (14) The department shall develop a program that allows a person that might be affected by the
11 issuance of the permit, but that is not the owner of the property subject to the permit, to express
12 concerns to the department prior to the issuance of the permit. For purposes of this subsection,
13 persons that might be affected by the issuance of the permit are the city or county in which the road
14 is located and any person that owns property adjacent to the proposed access. Nothing in this sub-
15 section gives a city, county or other person that might be affected standing to appeal any decision
16 of the department regarding granting of the permit.

17 **SECTION 10. The amendments to ORS 374.312 by section 9 of this 2013 Act apply to ap-
18 plications filed on or after the effective date of this 2013 Act.**

19 20 HIGHWAY PROJECTS

21
22 **SECTION 11. The following apply to all Department of Transportation highway mainte-
23 nance and modernization projects:**

24 (1) The department may not use the presence of an alternate highway approach to a
25 property abutting a state highway as the sole basis for closing or modifying an existing
26 highway approach.

27 (2) The department may not propose or construct nontraversable medians as a safety or
28 mitigation measure unless the department first establishes that no other safety or mitigation
29 measure is effective or available.

30 (3) The department may not close or propose the closure of an existing highway approach
31 within a highway project unless the department first establishes that the approach poses
32 safety or highway operations concerns as described in ORS 374.312 (10)(g).

33 34 INTERCHANGE AREA MANAGEMENT PLANS

35
36 **SECTION 12. The following apply to all Department of Transportation interchange area
37 management plans, as defined by the department by rule:**

38 (1) The department may not impose street or access spacing standards within a plan area
39 that are inconsistent with the street or access spacing standards of the local jurisdiction for
40 which the plan is proposed.

41 (2) The department may not use the presence of an alternate highway approach to a
42 property abutting a state highway as the sole basis for proposing the closure or modification
43 of an existing highway approach within a plan area.

44 (3) The department may not propose or construct nontraversable medians in a plan area
45 as a safety or mitigation measure unless the department first establishes that no other

1 **safety or mitigation measure is effective or available.**

2 **(4) The department may not close or propose the closure of an existing approach within**
3 **the plan area unless the department first establishes that the approach poses safety or**
4 **highway operations concerns as described in ORS 374.312 (10)(g).**

5
6 **CAPTIONS**
7

8 **SECTION 13. The unit captions used in this 2013 Act are provided only for the conven-**
9 **ience of the reader and do not become part of the statutory law of this state or express any**
10 **legislative intent in the enactment of this 2013 Act.**

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