

**Enrolled**  
**Senate Bill 408**

Sponsored by Senator JOHNSON; Representative DAVIS (Presession filed.)

CHAPTER .....

AN ACT

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

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

**SECTION 1.** Sections 2 to 5 of this 2013 Act are added to and made a part of ORS 374.302 to 374.330.

**SECTION 2.** (1)(a) An owner of real property abutting a state highway with an existing approach road is presumed to have the Department of Transportation’s written permission for the approach road based upon documentation for a highway project completed by the department that shows that the approach road was built or rebuilt as part of the project or that the department intended to issue an approach permit to the property owner for the approach road.

(b) The department shall have the burden to establish that the factual basis for the presumption in paragraph (a) of this subsection does not exist.

(2)(a) An owner of real property abutting a state highway with an approach road that was in existence before April 1, 2000, is also presumed to have the department’s written permission for the approach road based upon documentation in any form that shows:

(A) That the approach road was in existence before July 16, 1949;

(B) That the approach road was in existence before the department accepted jurisdiction of the highway from a city or county; or

(C) That the approach road was built or rebuilt with the department’s knowledge or permission.

(b) The department shall have the burden to establish that the factual basis for the presumption in paragraph (a) of this subsection does not exist. The department may rebut the presumption in paragraph (a) of this subsection by a showing that there is insufficient documentation to determine whether the approach road was built or rebuilt with the department’s knowledge or permission.

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

(4) For approach roads presumed to have written permission under this section, the determination of prior use for the purposes of ORS 374.312 (4) and (5) is the use of the property on the effective date of this 2013 Act.

(5) Except as provided in this section, an approach road built without the department’s written permission is subject to removal or reconstruction as provided in ORS 374.307.

(6) For purposes of ORS 374.302 to 374.330, 374.335 and 374.345, the presumption of written permission of the department for an approach road is deemed to be an approach permit issued by the department under ORS 374.310.

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

**SECTION 4.** (1) As used in this section, "facility plan" includes, but is not limited to, interchange area management plans, corridor plans, transportation refinement plans and access management plans.

(2) Every facility plan and access management strategy developed for a highway improvement or modernization project under this section or section 5 of this 2013 Act must include a methodology that balances 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.

(3) The following apply to all facility plans developed by the Department of Transportation:

(a) The location of county roads and city streets within the area described in the facility plan must be determined through collaborative discussion and agreement between the department and the affected cities and counties. Each facility plan must document the agreement regarding the location of county roads and city streets that intersect a state highway within the area described in the plan.

(b) The department shall develop key principles for each facility plan. The department shall use the key principles to evaluate how properties abutting a state highway may retain or obtain access to the state highway during and after plan implementation. In developing the key principles, the department shall also develop a methodology to weigh the benefits of a highway improvement or modernization project to public safety and mobility against:

(A) The local transportation system plans and the land uses permitted in the local comprehensive plans of cities and counties; and

(B) The economic development objectives of affected real property owners who require access to the state highway.

(c) If a facility plan identifies the need to modify, relocate or close existing private approaches, the plan must include key principles for managing access to the state highway. The key principles must contain a level of detail sufficient to inform affected real property owners of the potential for the modification, relocation or closure of existing private approaches within the area described in the facility plan.

(d) Each facility plan affecting access to a state highway must include a timeline by which the plan may need to be implemented in order to meet the safety and operational needs of the state highway.

(e) Each facility plan must include the long term safety and operational needs for the state highway and for all intersecting highways, roads or streets based on an engineering analysis conducted by a traffic engineer.

(f)(A) Until a facility plan is adopted by the Oregon Transportation Commission or finalized by the department, an affected real property owner may request a review of the key principles and related methodology developed by the department through:

(i) A collaborative discussion as established by the department by rule; or

(ii) The Access Management Dispute Review Board established under ORS 374.360.

(B) The recommendation of the Access Management Dispute Review Board under subparagraph (A) of this paragraph is not a land use decision, as defined in ORS 197.015, that may be appealed to the Land Use Board of Appeals.

(4) Prior to adopting any key principle under subsection (5) of this section, the department shall provide notice and an opportunity to be heard to the affected cities and counties and to affected real property owners. The department shall provide notice by first class mail.

(5) Twenty days after the date the department sends written notice under subsection (4) of this section, the department, in agreement with the affected cities and counties, shall adopt the key principles for a facility plan.

**SECTION 5.** (1) As used in this section:

(a) "Access management strategy" means a project delivery strategy developed by the Department of Transportation, in collaboration with cities, counties and owners of real property abutting a state highway in the affected area, that identifies the location and type of public and private approaches and other necessary improvements that are planned to occur primarily in the highway right of way and that are intended to improve current conditions on the section of highway by moving in the direction of the objective standards described in ORS 374.311, subject to safety and highway operations concerns.

(b) "Project" means a highway improvement project or highway modernization project included in the Statewide Transportation Improvement Program.

(2) The Department of Transportation shall develop an access management strategy for each project. In developing an access management strategy, the department shall engage affected real property owners when:

(a) Establishing the methodology by which private approaches will be considered for modification, relocation or closure; or

(b) The department proposes to acquire all rights of access to a segment of the state highway.

(3) Within 21 days after the department finalizes the methodology by which private approaches will be considered for modification, relocation or closure, an affected real property owner may request a review of the methodology through:

(a) A collaborative discussion as established by the department by rule; or

(b) The Access Management Dispute Review Board established under ORS 374.360.

(4) If a facility plan, as defined in section 4 of this 2013 Act, is created for a project, the facility plan must include a sufficient level of detail to identify the location of the private approaches affected by the project.

(5) The department shall work with the cities, counties, highway users and real property owners affected by a project to:

(a) Identify deficiencies with each highway segment impacted by a project; and

(b) Establish the long-term vision for each highway segment impacted by a project that would guide the scope and design of improvements within the highway segment.

(6) The following apply to all projects that include modification, relocation or closure of existing private approaches to a state highway:

(a) The location of intersecting county roads and city streets shall be consistent with the city and county transportation system plans or shall be determined and agreed upon through collaborative discussion between the department and the cities and counties affected by the project.

(b) The department shall determine the location of private approaches in the access management strategy in collaboration with affected real property owners using a collaborative discussion as established by the department by rule.

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

374.313. (1) If the Department of Transportation closes an approach road for which a permit was issued under ORS 374.310 or section 2 of this 2013 Act or that was allowed by law prior to enactment of statutory permit requirements for approach roads, or if the department denies an ap-

plication for an approach road permit submitted pursuant to a grant or reservation of access contained in a contract, condemnation judgment or recorded deed, and the closure or denial is not the result of conditions contained in a contract, condemnation judgment, recorded deed or permit, a person holding an interest in the real property benefited by the access or proposed access may file a claim for relief as a contested case under ORS 183.415 to 183.500.

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

(3) In any proceeding under this section, any party may cause an appraisal of the subject property to be conducted. If the difference in value between a property owner's claim and an offer of monetary compensation by the department is less than \$30,000, the director shall provide a simplified procedure for resolving the claim. The cost of conducting an appraisal may be shared by the 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.

**SECTION 9. Sections 4 and 5 of this 2013 Act apply to facility plans and access management strategies that are initiated on or after the effective date of this 2013 Act.**

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**Passed by Senate March 11, 2013**

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House June 13, 2013**

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Tina Kotek, Speaker of House

**Received by Governor:**

.....M,....., 2013

**Approved:**

.....M,....., 2013

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John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2013

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Kate Brown, Secretary of State