

A-Engrossed
Senate Bill 408

Ordered by the Senate March 6
Including Senate Amendments dated March 6

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.

[Grants written permission by Department of Transportation for] **Establishes presumption that certain** existing unpermitted approach roads *[under certain circumstances]* **have Department of Transportation's written permission.** 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.

Provides requirements for development of facility plans.

Directs department to develop access management strategy for each highway modernization or improvement project. Defines "access management strategy."

A BILL FOR AN ACT

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

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

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

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

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

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

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

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

21 **(C) That the approach road was built or rebuilt with the department's knowledge or**
22 **permission.**

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

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 the presumption in paragraph (a) of this subsection by a showing that there is insufficient
2 documentation to determine whether the approach road was built or rebuilt with the
3 department's knowledge or permission.

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

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

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

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

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

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

24 (2) Every facility plan and access management strategy developed for a highway im-
25 provement or modernization project under this section or section 5 of this 2013 Act must
26 include a methodology that balances the economic development objectives of properties
27 abutting state highways with the transportation safety and access management objectives
28 of state highways, in a manner consistent with local transportation system plans and the
29 land uses permitted in the local comprehensive plans acknowledged under ORS chapter 197.

30 (3) The following apply to all facility plans developed by the Department of Transporta-
31 tion:

32 (a) The location of county roads and city streets within the area described in the facility
33 plan must be determined through collaborative discussion and agreement between the de-
34 partment and the affected cities and counties. Each facility plan must document the agree-
35 ment regarding the location of county roads and city streets that intersect a state highway
36 within the area described in the plan.

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

42 (A) The local transportation system plans and the land uses permitted in the local com-
43 prehensive plans of cities and counties; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 374.313. (1) If the Department of Transportation closes an approach road for which a permit was
22 issued under ORS 374.310 or section 2 of this 2013 Act or that was allowed by law prior to
23 enactment of statutory permit requirements for approach roads, or if the department denies an ap-
24 plication for an approach road permit submitted pursuant to a grant or reservation of access con-
25 tained in a contract, condemnation judgment or recorded deed, and the closure or denial is not the
26 result of conditions contained in a contract, condemnation judgment, recorded deed or permit, a
27 person holding an interest in the real property benefited by the access or proposed access may file
28 a claim for relief as a contested case under ORS 183.415 to 183.500.

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

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

40 **SECTION 7.** ORS 374.335 is amended to read:

41 374.335. Where any private road crosses or is crossed by a public highway, the [*driving*] oper-
42 ation of a motor vehicle across the public highway or upon the public highway for a distance of not
43 [*to exceed*] more than 1,200 feet in the use of the private road is not subject to ORS 811.450, 815.155,
44 815.160, 815.170, 818.020, 818.060, 818.090, 818.110, 818.160, 818.300, 818.320, 818.340, 818.350, 818.400
45 and ORS chapter 825, provided such vehicle or vehicle use is:

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

4 (2) A farm tractor or implement of husbandry.

5 **SECTION 8.** ORS 374.345 is amended to read:

6 374.345. The Department of Transportation shall adopt rules regulating the procedures and cir-
7 cumstances under which the department may restrict turning movements onto a state highway from
8 an approach road for which a permit was issued under ORS 374.310 **or section 2 of this 2013 Act**
9 when the restriction is not required by contract, condemnation judgment, recorded deed or permit.

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

12