

**Access Management Oversight Task Force
Report to the Interim Legislative Committees Related to Transportation**

Chapter 330, Oregon Laws 2011 (Enrolled Senate Bill 264) established the 11 member Access Management Oversight Task Force whose members are appointed by the Governor, President of the Senate, and Speaker of the House. The members of the task force are:

- Senator Betsy Johnson (co-chair)
- Craig Pope (co-chair), Polk County Commissioner
- Senator Chuck Thomsen
- Representative Cliff Bentz
- Representative Margaret Doherty
- Representative Mike McLane
- Matthew Garrett, Director, Oregon Department of Transportation
- Mark Whitlow, Retail Task Force and the International Council of Shopping Centers
- Greg Jones, City of Portland
- Bob Russell, Oregon Trucking Associations
- Rob Sadowsky, Bicycle Transportation Alliance

The task force is to oversee and to monitor the Oregon Department of Transportation's (ODOT) implementation of Senate Bill 264 and to propose additional legislation as necessary. The task force must report annually to the interim legislative committees on transportation with its findings and recommendations. The task force sunsets January 2, 2016.

This is the task force's report for 2013.

2013 Legislation

The task force developed a legislative concept that led to the adoption of Senate Bill 408. The bill becomes effective on January 1, 2014.

SB 408 addressed three priorities established by the Task Force for legislation in 2013: existing approaches (private driveways) without ODOT's written permission; access management in highway facility plans; and, access management in highway project delivery. Following is a brief summary of the bill's provision in each of these areas.

Existing approaches without a written permit

The bill establishes a presumption of ODOT's written permission for existing private approaches that meet the criteria specified in the bill, including a right of access. This presumption of written permission provides a legal framework for the majority of approaches without written permission that exist on state highways. Examples include approaches that:

- Existed prior to 1949 when the state began to manage accesses
- Were built before the department established statewide standards for issuing permits
- Were built by the department as part of highway improvement projects

The presumption allows ODOT to manage existing approaches that do not have written permission in the same manner as approaches with written permission and gives property owners with these approaches the same legal rights as those with a permit. The bill allows ODOT to rebut the presumption if the department can provide a factual basis that the presumption does not exist. The bill also makes the property owner responsible for maintenance of the approach in accordance with ODOT standards.

Access management in highway facility plans

SB 408 established new procedural requirements for access management in highway facility plans (interchange area management plans, corridor plans and the like). It requires collaboration and agreement with local governments in determining the location of local roads that intersect highways in the planning area. Facility plans must include “key principles” to evaluate how access to properties abutting a state highway may retain or obtain access to the state highway. In developing the key principles, the department must also develop a “methodology” to weigh the benefits of highway improvements against the economic development objectives of affected real property owners. Property owners are provided formal opportunities to request review of the key principles and related methodology prior to the adoption of a facility plan by the Oregon Transportation Commission.

Access management in the context of project delivery

SB 408 requires that ODOT develop an Access Management Strategy for each modernization and highway improvement project in collaboration with the affected cities, counties and property owners. The department will engage affected real property owners in developing the methodology as part of the Access Management Strategy when proposing to modify, relocate or close connections to the highway. Similar to the key principles and methodology for a facility plan, property owners are provided an opportunity to request review of the methodology of an Access Management Strategy.

2014 Legislation

The task force discussed options to clarify the timeframe in which a property owner may seek review of the key principles and the related methodology in a facility plan by either the collaborative discussion process or by a Dispute Review Board. The text of SB 408 appears to allow this review at any time prior to adoption of a facility plan by the Oregon Transportation Commission. The department indicated that the issue could be addressed by administrative rule, but the task force also discussed the possibility of introducing legislation in the 2014 session.

The task force has not made a decision about recommending legislation for the 2014 session.

Administrative rules

The task force is monitoring ODOT’s development of administrative rules to implement SB 408.

The task force directed the department to merge the two advisory groups (private sector group and local government group) that it had set up for the development of the rules into a single group. At a minimum, the advisory group will include the membership of the two groups; others may participate. The advisory group will make recommendations to the task force for both temporary and permanent rules. Senator Johnson and Commissioner Pope will act as co-conveners of the advisory group.

The task force reviewed the department’s proposal for the temporary rulemaking needed to implement SB 408. After the task force’s discussion, the department agreed to withdraw its proposal for a temporary rule dealing with turning movements from the temporary rulemaking. ODOT will move forward to adopt temporary rules prior to January 1, 2014, to address collaborative discussion of key principles for facility plans, of related methodology, and of location of intersecting public roads.

The department and the advisory group will return to the task force for review of proposed rules to implement SB 408 prior to their adoption. Permanent rules must be adopted by the department by June 30, 2014 because temporary rules expire 180 days after their adoption.