Chapter 374

1957 REPLACEMENT PART

Control of Access to Public Highways

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THROUGHWAYS

374.005 Policy and purpose of ORS 374.005 to 374.095. (1) The kind, character and volume of traffic now moving over public highways, the speed at which such traffic moves, the prime and essential factors such as speed, safety and convenience to which transportation of persons and property over public highways is entitled, the relation which such transportation bears to the transportation systems of other states and of the nation as a whole, the ever-increasing toll of injury to and death of persons and the destruction of and damage to property caused by and resulting from accidents on public highways constitute and are conditions and elements which demand of highway officials a program of highway designing, highway regulations, highway use and operation, highway controls and highway safeguards which will make possible and insure a degree of safety and convenience and a type and class of service not possible under existing law.

(2) To the end that human lives may be saved, property damage minimized, transportation by motor vehicle promoted and highway travel in general safeguarded, the legislature finds, determines and declares that ORS 374.005 to 374.095 is necessary for the preservation of public safety, the improvement and development of transportation facilities in the state, the protection of highway traffic from the hazards of unrestricted and unregulated entry from adjacent property, the elimination of hazards due to highway grade intersections and in general the promotion of public welfare.

374.010 "Throughway" defined. As used in ORS 374.005 to 374.095, "throughway" means a highway or street especially designed for through traffic, over, from or to which owners or occupants of abutting land or other persons have no easement of access or only a limited easement of access, light, air or view, by reason of the fact that their property abuts upon the throughway or for any other reason.

374.015 Highway commission to establish and maintain throughways; highways to be designated throughways. (1) The State Highway Commission, in addition to and without restricting, limiting or repealing any powers and authority which it now has, may lay out, locate, relocate, adopt, establish, construct, designate, maintain and supervise the use and operation of new highways known as throughways.

(2) Any relocated section of an existing highway and such portions of existing highways, which at the time they are designated as throughways have less than 10 commercial businesses abutting thereon catering to the motoring public in any one mile of such existing highway, may be designated and constructed as or converted into a throughway by the State Highway Commission. As used in this subsection, "relocated" means a highway or section thereof so located that for its construction an entirely new right of way is necessary.

(3) The authority and power of the State Highway Commission extends to and includes state highways within the corporate limits of cities, and with the approval of the municipal authorities may extend to and include city streets.

374.020 Interference with railroad facilities prohibited. No throughway shall be established upon or across the tracks, yards, station grounds or other operating properties of any common carrier railroad, or upon or across any industrial or business property served by railroad industrial trackage, or upon or across any property at such a location as to unduly interfere with the reasonable access of shippers, passengers or the public to railroad depots, team tracks or other facilities for receiving or delivering freight or passengers transported by railroad unless the State Highway Commission and the railroad agree on a proposed throughway project, or unless the Public Utility Commissioner finds by order, upon petition of the State Highway Commission, after notice to the railroad and hearing in accordance with his rules of practice, that public convenience and necessity so require.

374.025 Change from throughway to highway. Any state highway or section thereof which has been located, established, designated and constructed as a throughway may, in whole or in part, be changed from a throughway to an ordinary highway by the State Highway Commission if in its judgment such action will best serve public needs.

374.030 Separation of throughways into separate roadways; ingress and egress. (1) The State Highway Commission may so design a throughway and so regulate, restrict or prohibit access thereto and use thereof as to best serve the traffic for which the

throughway is intended. In this connection and for such purpose the commission may divide and separate any throughway into separate roadways or lanes by the construction of raised curbings, central dividing sections or other physical separations, or by designating separate roadways or lanes by signs, markers or stripes and the proper lanes for traffic by appropriate signs, markers, stripes or other devices.

(2) After any highway has been so marked or designed no person has any right of ingress or egress to, from or across the highway to or from abutting lands, except at such points as may be designated by the commission.

374.035 Acquisition of real property; effect of resolution. (1) The State Highway Commission may, in the name of the state, acquire by agreement, donation or exercise of the power of eminent domain, fee title to or any interest in any real property, including easements of air, view, light and access, which in the opinion or judgment of the commission is deemed necessary for the construction of any throughway, the establishment of any section of an existing state road or highway as a throughway or the construction of a service road. The commission may accomplish such acquisition in the same manner and by the same procedure as real property is acquired for state highway purposes, except that in case the acquisition is by proceedings in eminent domain the resolution required under such procedure shall specify, in addition to other provisions and requirements of law, that the real property is required and is being appropriated for the purpose of establishing, constructing and maintaining a throughway.

(2) A resolution adopted by the commission stating and setting forth that a proposed highway is to be constructed as a throughway is conclusive evidence that the highway when constructed is a throughway with all the characteristics and incidents prescribed by and provided for in ORS 374.005 to 374.095.

374.040 Acquisition of land not immediately needed. Whenever it becomes necessary to acquire any real property for use in connection with the location, relocation, construction, reconstruction, improvement and maintenance of any throughway or section thereof or for a service road, the State Highway Commission may, in its discretion, acquire an entire lot, block or tract of land if by so doing the interests of the owner and the state will be best served, even though the entire tract is not immediately needed for the highway proper. This provision and authority shall apply to and be effective whether the real property is acquired by purchase, agreement or exercise of the power of eminent domain.

374.045 Payment for land acquired. The State Highway Commission may pay the cost incident to the acquisition of real property or any interest therein for the establishment, location and relocation of throughways and their construction, reconstruction and maintenance out of state highway funds in the same manner that such funds are disbursed for other highway purposes by the commission.

374.050 Parties bringing eminent domain proceedings. In case an agreement provided for in ORS 374.080 has been entered into, proceedings in eminent domain for the acquisition of real property or any interest therein deemed necessary therefor, may be brought in the name of the state by the State Highway Commission, alone or jointly with any city, county or city and county which are parties to the agreement.

374.055 Evidentiary purposes of improvement plan. In any proceeding in eminent domain evidence of the entire plan of improvement is admissible for the purpose of determining:

(1) Value of property taken.

(2) All damages by reason of deprivation of right of access to any highway to be constructed, established or maintained as a throughway.

(3) The damages which, if the property sought to be condemned constitutes a part of a larger parcel, will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned and by reason of the construction of the improvement in the manner proposed.

374.060 Power of highway commission as to intersecting streets and roads. The State Highway Commission, with the official approval of municipal authorities of cities with respect to city streets and with the official approval of the county court or board of county commissioners of any county with respect to county roads, may:

(1) Close any street, highway or road

at or near the point of its intersection with a throughway; or

(2) Make provision for carrying the street or road over or under the throughway; or

(3) Provide a connection with a throughway by means of a utility or service road to a suitable point of connection; and

(4) Do any and all work on the street, highway or road as is necessary therefor.

374.065 Intersection of throughways and county roads. (1) The State Highway Commission shall provide for the intersection of throughways by county roads running into or across throughways.

(2) Any county road may be closed at the points where it runs into or intersects the throughway if the consent of the county court or board of county commissioners of the county in which the road is located is first obtained.

(3) After the establishment of a throughway, no county road shall be constructed running into or intersecting the throughway unless its plans and specifications have first been submitted to and approved in writing by the commission. This approval shall be made a matter of record by the commission and by the county court or board of county commissioners.

374.070 Throughways in cities; intersecting streets. (1) Should any portion or section of a throughway be within the corporate limits of a city, provision shall be made for access thereto from existing streets at points designated by the municipal authorities of the city. In the event plans and specifications are submitted to the municipal authorities of the city by the State Highway Commission and the municipal authorities fail to designate such points within 60 days thereafter, the designation may be made by the commission.

(2) After establishment of any throughway in or through a municipality, no street shall be constructed turning into or intersecting the throughway unless the plans and specifications therefor have first been submitted to and approved in writing by the commission and made a matter of official record.

(3) Nothing in this section prohibits the closing of any street at the point where it runs into or intersects any throughway by the proper municipal authorities in the manner provided by law.

374.075 Cooperation of municipal and county authorities with highway commission. The municipal authorities of cities and the county court or board of county commissioners of any county may do anything or all things necessary to cooperate with the State Highway Commission for laying out, acquiring and constructing any section or portion of any street or highway within their respective jurisdiction as a throughway and to convert any existing street or highway into a throughway.

374.080 Agreements with Federal Government, counties and cities. The State Highway Commission may enter into cooperative agreements with the Federal Government and with any county or city for the location, adoption, construction and maintenance of a throughway either within or without the corporate limits of any city, with respect to highways under the exclusive jurisdiction of the commission, roads under the jurisdiction of the county court or board of county commissioners and streets under the exclusive jurisdiction of cities, and may, in such agreements, agree upon the allocation of costs of the project, the manner and method of maintenance and all other relevant matters.

374.085 Severance by throughway of agricultural land. Wherever by the location, relocation, establishment and construction or reconstruction of a throughway under ORS 374.005 to 374.095 real property, title to which is held under one ownership, is severed and the land is being used for farm or other agricultural purposes, provision shall be made by the State Highway Commission for crossing the highway from one such tract to the other or compensation for the severance of the tract shall be paid. Should such tracts at any time cease to be held under one ownership, the commission may terminate and discontinue the road crossings. No such connecting-road crossing shall be used for or in connection with the conduct of any roadside business or enterprise, but shall be available and used solely for passage from one of the severed tracts to the other.

374.090 Destruction by throughway of access to agricultural property. Whenever a throughway is located, relocated, constructed or reconstructed through or over farm or agricultural property and thereby all reasonable ingress and egress have been destroyed, the State Highway Commission

shall provide access from the abutting properties to the throughway by a service road or by direct access, unless by agreement with the owners of the abutting properties access to the throughway has been waived by the property owner or has been acquired by the state by agreement or exercise of the power of eminent domain.

374.095 Utility roads where access to abutting property affected. If under ORS 374.005 to 374.095 any existing highway or section of existing highway is converted into a throughway, by reason thereof real properties then occupied and used are affected and such abutting real properties are dependent upon the existing highway or section of highway for ingress and egress, the State Highway Commission shall provide a utility or service road to serve the properties. This utility or service road shall be constructed and maintained by the state at state expense and shall follow a location or route immediately parallel to and adjoining the throughway. After the service or utility road has been constructed the abutting land owner's right of reasonable view shall not be impaired.

374.100 to 374.200 [Reserved for expansion]

CONTROL OF PRIVATE ROADS CROSSING AND CROSSED BY HIGHWAYS

374.205 Approval of Public Utility Commissioner for private road crossings. Private roads designed for use by trucks not permitted to use public highways shall not be constructed across any state highway or public highway, including county roads, nor shall any state highway or public highway be constructed across any such private road, until the crossing is approved in each case by the Public Utility Commissioner under ORS 374.205 to 374.265.

374.210 Filing application with commissioner; contents. Whenever the owners or operators of any private road mentioned in ORS 374.205 propose to construct the private road across any established state highway or public highway and whenever the State Highway Commission or any county court or board of county commissioners proposes to construct any public highway across any such private road, the parties proposing the crossing shall file with the Public Utility Commissioner an application in writing setting forth:

(1) The location, type and ownership of the private road.

(2) The character and kind of commodity to be moved thereover.

(3) The maximum size, gross weight of vehicle and load and gross axle weight of the trucks to be used thereon.

(4) The place or site at which the crossing is to be constructed, together with a description or name of the public highway involved.

(5) Any other facts, information or data that may be required by the Public Utility Commissioner.

374.215 Investigation by commissioner. Upon receiving the application mentioned in ORS 374.210, the Public Utility Commissioner shall immediately investigate it, notifying the State Highway Commission or county court or board of county commissioners if the application has been made by the owners or operators of a private road, and notifying such owners or operators if the application has been made by the State Highway Commission or a county court or board of county commissioners, to the end that all parties interested may be present and may be heard at the investigation.

374.220 Payment of filing fee and investigation costs; disposition of receipts. (1) A $10 filing fee shall accompany an application mentioned in ORS 374.210; and the applicant shall also pay the actual costs of conducting field investigations and hearings together with 10 percent of such costs for administrative expense.

(2) All fees and other moneys received by the commissioner under this section shall be paid into the State Treasury and credited to the Public Utility Commissioner Account and shall be used only for the purpose of paying the expenses of the commissioner under ORS 374.205 to 374.265. [Amended by 1957 c.459 §3]

374.225 Answer. Any party affected, whether served with notice of the application or not, may file an answer setting forth facts and information bearing upon the questions presented by the application.

374.230 Commissioner to prescribe manner of constructing crossing. After the investigation and hearing, the Public Utility Commissioner shall by order prescribe the

manner in which the crossing shall be constructed and particularly whether it shall be constructed at grade, above or below grade.

374.235 Crossings at grade. If a crossing at grade is authorized, the order allowing it shall require the applicant to erect and maintain such warning devices, traffic signals or other traffic controls, including flagmen where necessary, as in the judgment of the Public Utility Commissioner may be necessary for the proper and adequate protection of the traveling public.

374.240 Separation of grades. If the Public Utility Commissioner orders a separation of grades, the order shall determine whether the applicant's road or highway shall cross above or below the established road or highway and shall prescribe such measures for the safety of the traveling public as the Public Utility Commissioner deems necessary.

374.245 Owners and operators to pay cost of crossing and damage to highway; insurance. (1) Whenever the owners or operators of a private road are authorized to construct the road across an established highway pursuant to ORS 374.205 to 374.265, the order of the Public Utility Commissioner shall require such owners or operators to assume and bear the entire cost of construction and maintaining the crossing and of providing and maintaining such safety devices and safety requirements as the order determines are necessary.

(2) The order shall require the applicant to assume responsibility for any damage to the established highway through the construction, operation, maintenance or use of the crossing.

(3) The Public Utility Commissioner may in his discretion require the operators or owners to provide public liability and property damage insurance, in such amounts as the commissioner may determine, supporting the obligation of the owners and operators.

374.250 Highway commission and county court to pay cost of crossing. Whenever the State Highway Commission or a county court or board of county commissioners is authorized to construct a public highway across an established private road mentioned in ORS 374.205, the order authorizing the crossing shall direct that the entire cost of constructing and maintaining the crossing shall be paid out of State Highway Commission funds or the road funds of the county in the case of a county road.

374.255 Abolition, alteration or change in crossings; division of expense. (1) The Public Utility Commissioner may also, after a hearing, alter or abolish any existing crossing at grade by a private road over a state highway or public highway under the jurisdiction of the State Highway Commission or alter or change any crossing by one such road or the other when, in his opinion, the public safety, public convenience and the general welfare may require the alteration or change.

(2) The Public Utility Commissioner shall determine by order after a hearing the manner in which any such road or highway shall cross such other road or highway or the manner in which the crossing shall be altered or changed.

(3) The expense of such alteration or change and the maintenance of the crossing after the change shall be divided in such manner and in such proportion as the Public Utility Commissioner deems just and reasonable in the circumstances.

374.260 Re-opening crossing proceedings. The Public Utility Commissioner shall retain jurisdiction over all such crossings so that at any time upon the commissioner's own motion or upon the motion or application of any interested party the proceeding may be re-opened for such further or additional requirements as the commissioner may impose.

374.265 Driving motor vehicle across public highway not deemed operation thereon. Where any private road crosses or is crossed by a public highway the driving of a motor vehicle across the public highway or upon the public highway for a distance of not to exceed 1,200 feet in the use of the private road shall not be deemed the operation of the vehicle upon or over the public highway.

374.270 Cattle crossings under public highway. (1) Any person owning, using or occupying lands on both sides of any public highway is entitled to the privilege of making a crossing under the road for the purpose of letting his cattle and other domestic animals cross the road.

(2) Such person shall erect, at his own expense and subject to the consent and approval of the county court or board of county commissioners, a good and substan-

tial bridge and build an embankment of easy grade on either side thereof.

(3) The bridge shall:

(a) Have good railings on each side.

(b) Be not less than 16 feet wide.

(c) Be covered with planking not less than two inches thick.

(d) Be approved by the county roadmaster of the county in which the bridge is built.

(e) Be kept constantly in good repair by the owner or occupant of the land.

(4) In case the crossing is made on any waterway or natural channel for water and where a culvert or bridge is maintained and required for road purposes, the owner or occupants are not required to construct any more of the crossing than is necessary for the convenience of the owner in permitting and allowing his animals to cross the road under the culvert or bridge, in addition to the necessary cost of a suitable culvert or bridge for road purposes at such place.

(5) When completed, such person shall be allowed to connect his fences to the bridge to complete his stock way.

374.275 to 374.300 [Reserved for expansion]

APPROACH ROADS AND OTHER FACILITIES UPON RIGHT OF WAY OF STATE HIGHWAY OR COUNTY ROAD

374.305 Necessity of permission to build on rights of way. No person, firm or corporation may place, build or construct on the right of way of any state highway or county road, any approach road, structure, pipeline, ditch, cable or wire, or any other facility, thing or appurtenance without first obtaining written permission from the State Highway Commission with respect to state highways or the county court or board of county commissioners with respect to county roads. [Amended by 1955 c.424 §1; 1957 c.323 §1]

374.307 Removal or repair of installation constructed without permission. If any person, firm or corporation builds or constructs on the right of way of any state highway or county road any approach road or any other facility, thing or appurtenance without first obtaining the written permission required by ORS 374.305, the State Highway Commission or the county court or the board of county commissioners shall, after the expiration of 30 days following the transmittal of a written notice to such person, firm or corporation, at the expense of such person, firm or corporation, remove all such installations from the right of way or reconstruct, repair or maintain any such installation in accordance with or as required by the rules and regulations. This expense may be recovered from such person, firm or corporation by the state or county in any court of competent jurisdiction. [1955 c.424 §5]

374.310 Rules and regulations; issuing permits. (1) The State Highway Commission with respect to state highways and the county court or board of county commissioners with respect to county roads shall adopt reasonable rules and regulations and may issue permits, not inconsistent with law, for the construction or placing of any approach road, structure, pipeline, ditch, cable or wire, or any other facility, thing or appurtenance upon rights of way; provided, however, that the highway commission shall issue no permit for the construction of any approach road at a location where no rights of access exist between the highway and abutting real property.

(2) Such rules and regulations and such permits may include, but need not be limited to, provisions for construction of culverts under approaches, requirements as to depth of fills over culverts and requirements for drainage facilities and curbs, islands and other facilities for traffic channelization as may be deemed necessary. Any such permit issued may contain such terms and conditions as in the judgment of the granting authority may be in the best interests of the public.

(3) The powers granted by this section and ORS 374.315 shall not be exercised so as to deny any property adjoining the road or highway reasonable access. [Amended by 1955 c.424 §2; 1957 c.323 §2]

374.315 Construction under permits; maintenance after construction. All construction under the permits issued under ORS 374.310 shall be under the supervision of the granting authority and at the expense of the applicant. After completion of the construction of the particular approach road, facility, thing or appurtenance, they shall be maintained at the expense of the applicant and in accordance with the rules and

regulations adopted pursuant to ORS 374.310.

374.320 Removal or repair of installation on right of way at expense of applicant. Upon failure of the applicant to construct or maintain the particular approach road, facility, thing or appurtenance in accordance with the rules and regulations and the conditions of the permit, the State Highway Commission or the county court or board of county commissioners shall, after the expiration of 30 days following the transmittal of a written notice to the applicant, at applicant's expense, remove all such installations from the right of way or reconstruct, repair or maintain any such installation in accordance with or as required by such rules and regulations and the conditions of such permit. This expense may be recovered from the applicant by the state or county in any court of competent jurisdiction. [Amended by 1955 c.424 §3]

374.325 Effect of ORS 374.305 to 374.325. Nothing in ORS 374.305 to 374.325 shall:

(1) Limit or affect any of the powers granted to, or duties imposed upon, the county courts or boards of county commissioners, the State Highway Commission or the Public Utility Commissioner by ORS 758.010 and 758.020, or any rights granted or authorized under those statutes.

(2) Grant any right for the construction or placing of an approach road, structure, pipeline, ditch, cable or wire, or other facility, thing or appurtenance on the right of way of any highway. [Amended by 1957 c.323 §3]

374.330 Prior status preserved. Nothing in ORS 374.305, 374.310 and 374.325, as such sections were amended by chapter 323, Oregon Laws 1957, shall be deemed to affect any approach road, structure, pipeline, ditch, cable or wire, or other facility, thing or appurtenance lawfully placed or constructed upon the right of way of any highway prior to August 20, 1957. [1957 c.323 §4]

374.335 to 374.400 [Reserved for expansion]

RIGHTS APPURTENANT TO PROPERTY ABUTTING CERTAIN HIGHWAYS AND ROADS

374.405 Access rights of property abutting on state highways. No rights in or to any state highway, including what is known as right of access, shall accrue to any real property abutting upon any portion of any state highway constructed, relocated or reconstructed after May 12, 1951, upon right of way, no part of the width of which was acquired prior to May 12, 1951, for public use as a highway, by reason of the real property abutting upon the state highway.

374.410 Highway commission to prescribe access rights of abutting property. In connection with any acquisition of real property for right of way of any state highway, the State Highway Commission shall prescribe and define the location, width, nature and extent of any right of access that may be permitted by the commission to pertain to real property described in ORS 374.405.

374.415 Action to prevent entering or leaving state highways in manner not authorized. The State Highway Commission may commence and prosecute to final determination any suit, action or proceeding in the name of the state by and through the commission, which in its judgment is necessary to enjoin and prevent any person, whether acting individually or by agent, from entering upon or departing from any state highway mentioned in ORS 374.405, at any location, for any use or in any manner not authorized by any grant of a right of access, as provided in ORS 374.410.

374.420 Access rights of property abutting on county roads. No rights in or to any county road, within any county having a population in excess of 125,000 and not over 300,000 persons according to the last census, including what is known as right of access, shall accrue to any real property or any part thereof abutting upon any portion of any such county road constructed, relocated or reconstructed after May 12, 1951, upon any portion of right of way, no part of the width of which was acquired prior to May 12, 1951, for public use as a road or highway, merely by reason of the real property abutting upon the county road.

374.425 County court to prescribe access rights of abutting property. In connection with any acquisition of real property for right of way of any county road, the county court or board of county commissioners of any county having a population in excess of 125,000 and not over 300,000 persons according to the last census may

prescribe and define the location, width, nature and extent of any right of access that may be permitted by the county court or board of county commissioners to pertain to real property abutting upon the right of way of any county road under its jurisdiction, constructed, relocated or reconstructed after May 12, 1951.

374.430 Action to prevent entering or leaving county roads in manner not authorized. The county court or board of county commissioners of any county having a population in excess of 125,000 and not over 300,000 persons according to the last census may commence and prosecute to final determination any suit, action or proceeding which in its judgment is necessary to enjoin and prevent any person, whether acting individually or by agent, from entering upon or departing from any county road under its jurisdiction, mentioned in ORS 374.420, at any location, for any use or in any manner not authorized by any grant of a right of access, as provided in ORS 374.425.

PENALTIES

374.990 Penalty for violation of ORS 374.305 or of a regulation adopted under ORS 374.310. In addition to the liability for expenses under ORS 374.307 and 374.320, violation of ORS 374.305 or of any rule or regulation adopted under ORS 347.310 is a misdemeanor. [1955 c.424 §6]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 2, 1957.

Sam R. Haley
Legislative Counsel