

IN THE SENATE

SENATE BILL NO. 1347

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE IDAHO TRANSPORTATION BOARD; AMENDING SECTION 40-310,
2 IDAHO CODE, TO ESTABLISH PROVISIONS RELATING TO THE STATE TRANSPORTA-
3 TION BOARD ESTABLISHING STANDARDS REGARDING THE LOCATION, DESIGN AND
4 CONSTRUCTION OF PROVIDING ACCESS FROM PROPERTIES ADJACENT TO STATE
5 HIGHWAYS, TO ESTABLISH PROVISIONS RELATING TO APPLICATIONS FOR CERTAIN
6 PERMITS, TO PROVIDE FOR A DECISION ON THE RECORD, TO PROVIDE FOR FIND-
7 INGS, TO PROVIDE FOR RULES AND TO MAKE A TECHNICAL CORRECTION.
8

9 Be It Enacted by the Legislature of the State of Idaho:

10 SECTION 1. That Section 40-310, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 40-310. POWERS AND DUTIES -- STATE HIGHWAY SYSTEM. The board shall:

13 (1) Determine which highways in the state, or sections of highways,
14 shall be designated and accepted for the purpose of this title as a part of
15 the state highway system.

16 (a) In determining which highways or section of highways shall be a
17 part of the state highway system, the board shall consider the rela-
18 tive importance of each highway to cities, existing business, industry
19 and enterprises and to the development of cities, natural resources,
20 industry and agriculture and be guided by statistics on existing and
21 projected traffic volumes. The board shall also consider the safety
22 and convenience of highway users, the common welfare of the people of
23 the state, and of the cities within the state and the financial capacity
24 of the state of Idaho to acquire rights-of-way and to construct, re-
25 construct and maintain state highways. In making a determination, the
26 board must, before it can abandon, relocate, or replace by a new high-
27 way, any highway serving or traversing any city, or the area in which the
28 city is located, specifically find and determine that the benefits to
29 the state of Idaho are greater than the economic loss and damage to the
30 city affected. No highway serving or traversing any city shall be aban-
31 doned, relocated or replaced by a new highway serving the area in which a
32 city is located without the board first holding a public hearing in that
33 city. Written notice setting forth the action proposed to be taken by
34 the board shall be served upon the mayor of any city affected, and upon
35 all property owners from which acquisition of right-of-way is necessary
36 and from which that property must be purchased, by certified or regis-
37 tered mail, and shall also be published in at least one (1) issue of a
38 newspaper published and of general circulation in each city affected.
39 If there is no newspaper published in the city, then a notice shall be
40 posted in three (3) of the most public places in the city. The notice
41 shall contain a statement of any action contemplated by the board af-
42 fecting the city or property owner, and shall specify the time and place

1 of the hearing. At the hearing a property owner from which right-of-way
2 is necessary to be acquired and from which that property must be pur-
3 chased, and the governing body of any city affected may appear, voice
4 objections to the action proposed to be taken by the board, and may
5 present evidence and call witnesses in support of their objections. The
6 board shall give consideration to the protests and objections and make
7 a written decision determining whether or not the proposed action would
8 be of greater benefit to the state of Idaho than the economic loss and
9 damage resulting to the city. The board shall serve a written decision
10 upon the governing body of any affected city and property owners within
11 ten (10) days following the completion of the hearing, and no action
12 shall be taken by the board prior to the service of the written decision.

13 (b) Within ten (10) days after the written decision has been served, an
14 appeal may be taken from the decision by the person from whom the prop-
15 erty must be purchased, the interested city, board of county commis-
16 sioners, or highway district commissioners to the district court in and
17 for the county in which the city affected by the order is located. The
18 appeal shall be taken and perfected in the following manner:

19 1. The appellant shall file with the clerk of the district court
20 of the proper county, and serve upon the board, notice specifying
21 the grounds of appeal, and a certified copy of the decision of the
22 board appealed from. The district court shall then have jurisdic-
23 tion of the matter and may make any order or judgment that the eq-
24 uities of the case require. Upon the appeal being perfected, the
25 appeal shall receive a preferential place on the calendar of the
26 district court.

27 2. The appeal shall be heard and determined by the district court
28 in a summary manner as in a suit in equity, and the trial shall be a
29 trial de novo on the issues framed. The court may affirm, reverse,
30 or modify the order appealed from and may issue injunctions when-
31 ever it appears necessary for the protection of the interests of
32 any party to the appeal.

33 3. No bond or undertaking shall be required of any party appealing
34 under any of the provisions of this section.

35 4. The filing fees required in the district court shall be the same
36 as is provided for filing cases originally in the court.

37 (c) Any final order or judgment of the district court under this sub-
38 section shall be appealable to the supreme court of the state of Idaho
39 within thirty (30) days following the entry of the final order or judg-
40 ment in the same manner as appeals in civil actions are taken to the
41 supreme court.

42 (d) The board shall take no action on any matter affecting any property
43 owner from which right-of-way is necessary to be acquired or any city
44 until either:

45 1. The time has elapsed for an appeal to the district court and no
46 appeal has been filed; or

47 2. If an appeal has been taken to the district court, then until
48 the time for appeal from its final order or judgment to the supreme
49 court has elapsed and no appeal has been taken; or

1 3. If an appeal has been taken to the supreme court, then until the
2 matter has been finally determined by that court.

3 (2) The board shall cause to be prepared and publicly displayed in a
4 conspicuous place in their offices a complete map of the state highway sys-
5 tem in which each section shall be identified by location, length and a con-
6 trol number. The map shall be of a suitable size and scale and contain data
7 and information as deemed appropriate by the board. Periodically, and not
8 less than once each year, the board shall revise and correct the map to record
9 the changes in the designated state highway system resulting from additions,
10 abandonments and relocations. Hand maps of the state highway system shall be
11 issued periodically for public distribution.

12 (3) Abandon the maintenance of any highway and remove it from the state
13 highway system, when that action is determined by the unanimous consent of
14 the board to be in the public interest.

15 (4) Locate, design, construct, reconstruct, alter, extend, repair and
16 maintain state highways, and plan, design and develop statewide transporta-
17 tion systems when determined by the board to be in the public interest.

18 (5) Establish standards for the location, design, construction, re-
19 construction, alteration, extension, repair and maintenance of state high-
20 ways, provided that standards of state highways through local highway juris-
21 dictions shall be coordinated with the standards in use for the systems of
22 the respective local highway jurisdictions. The board shall make agreements
23 with local highway jurisdictions having within their limits state highway
24 sections in the category described in section 40-502, Idaho Code, and pro-
25 vide for an equitable division of the maintenance of those sections. The
26 board may also, in the interest of economy and efficiency, arrange to have
27 any or all of the state highway sections within local highway jurisdictions
28 maintained by those local highway jurisdictions, the cost of the work as lim-
29 ited by section 40-502, Idaho Code, to be reimbursed by the state.

30 (6) Cause to be made and kept, surveys, studies, maps, plans, specifi-
31 cations and estimates for the alteration, extension, repair and maintenance
32 of state highways, and so far as practicable, of all highways in the state,
33 and for that purpose to demand and to receive reports and copies of records
34 from county commissioners, commissioners of highway districts, county engi-
35 neers and directors of highways and all other highway officials within the
36 state.

37 (7) Approve and determine the final plans, specifications and esti-
38 mates for state highways and cause contracts for state highway work to be let
39 by contract in the manner provided by law.

40 (8) Expend funds appropriated for construction, maintenance and im-
41 provement of state highways.

42 (9) Designate state highways, or parts of them, as controlled-access
43 facilities and regulate, restrict or prohibit access to those highways to
44 serve the traffic for which the facility is intended.

45 (10) Close or restrict the use of any state highway whenever the closing
46 or restricting of use is deemed by the board to be necessary for the protec-
47 tion of the public or for the protection of the highway or any section from
48 damage.

49 (11) Designate main traveled state highways as through highways. The
50 traffic on through highways shall have the right-of-way over the traffic on

1 any other highway intersecting with it, provided, that at the intersection
2 of two (2) through highways the board shall determine which traffic shall
3 have the right-of-way.

4 (12) Furnish, erect and maintain standard signs on side highways di-
5 recting drivers of vehicles approaching a designated through highway to come
6 to a full stop before entering or crossing the through highway.

7 (13) Provide a right-of-way for and supervise the construction of side
8 paths or sidewalks along regularly designated state highways outside the
9 boundaries of incorporated cities and the expenditures for the construction
10 of them may be made from the highway funds of the county or highway districts.

11 (14) Upon certification and requisition of an appropriate board, com-
12 mission, governing body, or official head of any state institution and on the
13 approval of the governor, showing the same to be necessary, construct, al-
14 ter, repair, and maintain the roadways in, through, and about the grounds of
15 state institutions. The construction, alteration, repair and maintenance
16 shall be accomplished and paid for from the state highway account in accor-
17 dance with the provisions of chapter 7, title 40, Idaho Code. This provision
18 shall not be construed to divest any board, commission, governing body, or
19 official head of an institution their constitutional or statutory powers.

20 (15) Establish standards for the location, design, and construction of
21 providing access from properties adjacent to the state highways. In deter-
22 mining what is reasonable access to the state highway system, the board shall
23 apply the following criteria:

24 (a) The access must be sufficient to allow the highest and best use of
25 the adjacent property;

26 (b) The type, number, size and location of approaches must be adequate
27 to serve the volume and type of traffic reasonably anticipated to enter
28 and exit the property, based on the planned uses for the property;

29 (c) The determination of sufficient access shall be based upon the
30 economic development needs of the property abutting the highway for its
31 planned uses, subject only to consideration of safety and highway oper-
32 ations. The department shall have the burden of establishing safety and
33 highway operations concerns;

34 (d) If a property has a right of access and there is no means of access
35 to the property other than the state highway, an approach that does not
36 meet the spacing, channelization or sight distance standards as adopted
37 by the department does not need a deviation from the standards if the de-
38 partment and the applicant agree on the location of the approach that
39 optimizes safety, highway operations and site design;

40 (e) Except as otherwise provided in this section, the following proce-
41 cedure applies to all applications for an approach permit: the department
42 shall determine whether an application for an approach permit is com-
43 plete within thirty (30) days of receipt of application;

44 (f) The department may not use the presence of alternate access to a
45 property abutting a highway as a basis for denying an approach permit
46 application, except in rural areas where the presence of alternate ac-
47 cess is a consideration in determining whether to approve or deny a sec-
48 ond or subsequent approach permit application;

49 (g) The department may not impose nontraversable medians as a mitiga-
50 tion measure for approach permit applications unless the department

1 first establishes that no other mitigation measures are effective or
2 available under the circumstances;

3 (h) The department shall utilize an engineer with relevant experience
4 to review and respond to evidence from a qualified expert that is sub-
5 mitted by the applicant;

6 (i) The department shall have the burden of proving any safety or high-
7 way operations concerns relied upon in the department's decision to
8 approve an application with conditions or deny an application. Safety
9 or highway operations concerns that may be applied to the department's
10 permit decision on applications submitted pursuant to this section are
11 limited to one (1) or more of the following unique safety and highway
12 operations concerns:

13 (i) Regular queuing on the highway that impedes turning movements
14 associated with the proposed approach; or

15 (ii) Offset approaches that may create the potential for overlap-
16 ping left turn movements or competing use of a center turn lane; or

17 (iii) Insufficient distance for weave movements made by vehi-
18 cles exiting an approach across multiple lanes in the vicinity of
19 signalized intersections, roads classified by the Idaho trans-
20 portation commission as collectors or arterials on on-ramps or
21 off-ramps; or

22 (iv) Location of the proposed approach within a highway segment
23 with a crash rate that is twenty percent (20%) higher than the
24 statewide average for similar highways.

25 (j) The department shall make its decision to grant or deny an approach
26 permit on the record. When the department denies an application or ap-
27 proves an application with conditions, the department shall issue find-
28 ings specifying the basis of the decision for the record. The depart-
29 ment shall adopt rules specifying the form of the record.