

Regular Session, 2013

HOUSE CONCURRENT RESOLUTION NO. 9

BY REPRESENTATIVES GUINN, GISCLAIR, AND ST. GERMAIN

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TRANSPORTATION DEPT: Amends and repeals DOTD administrative rules pertaining to access permits

1 A CONCURRENT RESOLUTION

2 To amend the Department of Transportation and Development rules LAC 70:I.1501(C),
3 1515(D), (G), (H), (I), (J), and (K), 1519(B), (C), and (D),
4 1521(A)(2)(a)(introductory paragraph), (4), and (5), (B)(1), (4), and (5), and (E),
5 1529(C), 1531(B), (C), (D), (E), and (F), 1533(E), 1535(B), and 1541(B) and to
6 enact LAC 70:I.1501(E), which provides for requirements for access connection
7 permits, to provide for access connection permit conditions and requirements; to
8 provide for permit reapplication and modifications to existing commercial access
9 connections; to provide for access connection design requirements; to provide for
10 related matters; and to direct the Office of the State Register to print the amendments
11 and enactments in the Louisiana Administrative Code.

12 WHEREAS, certain access connection permit requirements of the Department of
13 Transportation and Development call for difficult processes to obtain access connections
14 and costly traffic impact studies to be conducted at the cost of the applicants; and

15 WHEREAS, in order for the Department of Transportation and Development to
16 consider granting these access connections, the traffic studies must show that the lack of
17 requested access connections unreasonably negatively impacts traffic flow or that additional
18 access connections will contribute to the overall improvement and safety of the roadways
19 and transportation system; and

20 WHEREAS, the cost of these traffic impact studies is an overwhelming burden on
21 applicants who are attempting to operate businesses in the state; and

1 WHEREAS, the Department of Transportation and Development has enacted policies
2 and administrative rules which place a burden on business and district administrators; and

3 WHEREAS, the lack of certain access connections can negatively affect a business
4 in that it may cause potential customers to go elsewhere; and

5 WHEREAS, these rules, as written and applied, stifle commerce; and

6 WHEREAS, a number of these policies have changed, but the changes to the
7 administrative rules are not yet implemented; and

8 WHEREAS, R.S. 49:969 provides that "the legislature, by Concurrent Resolution,
9 may suspend, amend, or repeal any rule or regulation or body of rules or regulations adopted
10 by a state department, agency, board, or commission".

11 THEREFORE, BE IT RESOLVED by the Legislature of Louisiana that LAC
12 70:I.1501(C), 1515(D), (G), (H), (I), (J), and (K), 1519(B), (C), and (D),
13 1521(A)(2)(a)(introductory paragraph), (4), and (5), (B)(1), (4), and (5), and (E), 1529 (C),
14 1531(B), (C), (D), (E), and (F), 1533(E), 1535(B), and 1541(B) are hereby amended and
15 LAC 70:I.1501(E) is hereby enacted, to read as follows:

16 §1501. Introduction

17 * * *

18 C. Incumbent with this is the obligation to protect the investment of the state
19 in the highway system. Access connections granted by the DOTD can be restrictive.
20 However, DOTD, through its district administrators, may grant exceptions to the
21 restrictions set forth in this Chapter based upon the uniqueness of the environment
22 in which access is sought.

23 * * *

24 E. The DOTD policy referred to throughout this Chapter is available on the
25 DOTD website.

26 * * *

1 §1515. Permit Conditions

2 * * *

3 D. The applicant may be required to post a bond in order to secure an access
4 connection permit. If required, this ~~This~~ bond shall be required and posted in
5 accordance with DOTD policy, and shall be an amount as identified by the DOTD
6 district office as sufficient to cover the expenses of all work or improvements
7 required within the DOTD right-of-way as a condition of an access connection
8 permit. The cost of restoration shall be borne by the applicant.

9 * * *

10 G. ~~Post-construction inspections are mandatory for traffic generator access~~
11 ~~connections.~~

12 H. After having been constructed, access connection(s) shall at all times be
13 subject to inspection with the right reserved to require changes, additions, repairs,
14 and relocations at any time considered necessary to permit the location and/or to
15 provide proper and safe protection to life and property on or adjacent to the highway.
16 The cost of making such mandated changes, additions, repairs, and relocations shall
17 be borne by the applicant.

18 ~~F~~ H. The relocations or alterations of any access, approach, or other
19 improvement constructed on the right-of-way shall require a new permit re-
20 evaluation of the access connection(s).

21 ~~F~~ I. If the applicant is unable to commence construction within 12 months of
22 the permit issue date, the applicant may request a six-month extension from the
23 DOTD. No more than two six-month extensions may be granted under any
24 circumstances. If the access connection is not constructed within 24 months from the
25 permit issue date, the permit shall be considered expired. Any person wishing to
26 reestablish an access connection permit that has expired shall begin again with the
27 application procedures.

28 ~~K~~ J. When the adjacent highway is under construction, a letter of no
29 objection ~~must~~ shall be obtained from the highway contractor before the application

1 can be approved and the permit can be issued. A copy of this letter shall be attached
2 to the permit.

3 * * *

4 §1519. Permit ~~Reapplication~~ Re-evaluation and Modifications to Existing
5 Commercial Access Connections

6 * * *

7 B. If the property is reconstructed/remodeled /redeveloped, the owner shall
8 submit a request for a re-evaluation of the access connection(s) new application for
9 an access connection permit. The ~~new application~~ evaluation shall contain all
10 necessary information and documentation as described in ~~Section entitled Process~~
11 ~~for Acquiring an Access Permit~~ DOTD policies, as well as a copy of the old access
12 connection permit.

13 C. If the property owner reconstructs the access connection, a ~~new access~~
14 ~~connection permit application~~ request for re-evaluation shall be submitted. The
15 DOTD reserves the right to make changes to the original permit during this process
16 in order to improve safety and operations.

17 D. If DOTD road maintenance and/or construction operations affect the
18 condition or necessitate the reconstruction, improvement, modification, or removal
19 of an existing access connection, a re-evaluation of the access connection
20 geometrics, location, etc., ~~shall~~ may be performed by the district traffic operations
21 engineer. The access connection permit ~~shall~~ may be re-issued according to the most
22 current DOTD standards, and DOTD reconstruction efforts shall follow these
23 standards. The cost to reconstruct the access connection to the right-of-way shall be
24 borne by the DOTD. Any additional costs to improve on-site conditions ~~shall~~ may
25 be borne by the property owner.

26 * * *

1 §1521. Access Connection Requirements

2 A.

3 * * *

4 2. In addition, the following constraints shall apply:;

5 a. Full access ~~shall~~ may not be granted within the functional influence area
6 of the intersection. The influence area shall be as defined in DOTD policies. For
7 purposes of this Chapter, the functional influence area of an intersection shall be
8 defined as the area beyond the physical intersection of two roadways and/or access
9 connection points that:

10 * * *

11 4. If the subject property is located at the intersection of two routes, an
12 access connection may be permitted on ~~one of the~~ both routes, but one must be
13 limited to right-in/right-out access. The determination of the access connection
14 ~~location~~ locations and restrictions on each shall be at the discretion of the DOTD
15 according to this rule and other applicable DOTD policies.

16 5. The applicant shall provide sufficient on-site circulation to ensure the safe
17 ingress and egress of vehicles on the site. This on-site circulation shall be contained
18 within the ~~owned~~ owner's property boundaries and shall not encroach upon the right-
19 of-way in any way. Adequate on-site vehicle storage shall be provided in order to
20 prevent any overflow of queued/waiting traffic in the travel lane(s) of the adjacent
21 roadway(s).

22 * * *

23 B. The granting of access shall adhere to the following decision hierarchy:;

24 1. Each property or group of adjacent properties with a single owner or
25 development plan ~~shall~~ may be granted no more than one access point, unless
26 Paragraphs 4 and 5 of this Section are completed and approved. The DOTD reserves
27 the right to limit access to adjacent properties to those access connections which

1 already exist. All properties shall receive adequate access, but that may be
2 accomplished through required access sharing with a neighboring property.

3 * * *

4 4. A request for an access connection on a state route where alternative
5 access connection opportunities exist on non-state route(s) ~~shall~~ may be accompanied
6 by a traffic impact study. This study shall comply with the guidelines and policies
7 set forth by the DOTD for such studies. In order to consider state route access in
8 these cases, the study shall show that the lack of access on the state route causes
9 unreasonable negative impacts to the traffic flow in the vicinity of the property.

10 5. Requests for access connections in excess of one access connection or for
11 an access connection on a state route where non-state route access exists must be
12 reviewed and approved by the district engineer administrator. Such requests ~~shall~~
13 may be accompanied by a traffic impact study. This study shall comply with the
14 guidelines and policies set forth by the DOTD for such studies. In order to consider
15 an additional access connection or an access connection on a state route where non-
16 state route access exists, the study shall show that the lack of the requested access
17 connections causes unreasonable negative impacts to the traffic flow and safety in
18 the vicinity of the property and shall demonstrate that an additional access
19 connection will contribute to the overall improvement of the safety and efficiency
20 of the adjacent roadways and of the transportation system.

21 * * *

22 E. Gates, fences, signage, landscaping, or other decorative or access-control
23 features (i.e. gated subdivision) shall not be located within the right-of-way. Any
24 such access-control feature shall be located so that a minimum storage of two
25 vehicles (50' storage length minimum; greater distances may be required by the
26 DOTD) is provided outside of the limits of the right-of-way. Gated access shall not
27 be permitted as an approach to a traffic signal.

28 * * *

1 §1529. Access Connections on Roadways with Medians

2 * * *

3 C. All access on roadways with medians may be restricted to right-in/right-
4 out movements only, and, if required, shall be constructed in such a way as to
5 prevent any other movements. This shall apply to both residential and commercial
6 access.

7 * * *

8 §1531. Design Requirements

9 * * *

10 B. All ~~single-family residential~~ and traffic generator access connections shall
11 be constructed with permanent hard surface type materials (i.e. asphalt or concrete)
12 ~~as shown on the standard plans for access connections~~ for a distance shown in DOTD
13 policy. Aggregate access connections shall not be permitted within the right-of-way
14 for these types of connections. ~~The hard surface type materials shall extend the~~
15 ~~following distances from the edge of pavement:~~

16 1. ~~single-family residential access connections: 10 feet from the edge of~~
17 ~~pavement;~~

18 2. ~~traffic generator access connections: 25 feet from the edge of pavement.~~

19 C. ~~Non-commercial agricultural operations may not be required to be~~
20 ~~constructed of hard surface type materials.~~

21 ~~D.~~ All entrances and exits shall be located so that drivers approaching or
22 using them will have adequate sight distance in all directions along the highway in
23 order to maneuver safely and without interfering with traffic. Minimum required
24 sight distance shall be calculated using the methods outlined in ~~the AASHTO~~
25 ~~Geometric Design Guide for sight distance based on the posted speeds of the~~
26 ~~adjacent roadway or a speed other than the posted speed limit for these calculations~~
27 DOTD policies.

28 ED. All access connections shall be designed and constructed in accordance
29 with all DOTD plans and specifications regarding drainage requirements. Culvert

1 sizes, proposed elevations, and proposed slopes shall be approved by the DOTD
2 prior to issuance of an access connection permit. The DOTD may require a drainage
3 study to be performed at the expense of the applicant.

4 FE. Access connections shall be constructed according to DOTD Standard
5 Plans and other applicable policies and ~~provision~~ provisions.

6 * * *

7 §1533. Construction Requirements

8 * * *

9 E. The services of an independent DOTD-approved inspector ~~shall~~ may be
10 ~~obtained~~ required to inspect the construction of all DOTD-required improvements
11 in the DOTD right-of-way. The inspection process shall be in accordance with
12 current DOTD policy. The DOTD district office may elect to perform independent
13 inspections of work. Satisfactory completion and acceptance of the improvements
14 by DOTD will be based upon the reports received from the inspector(s).

15 * * *

16 §1535. Improvements to the Adjacent Transportation System

17 * * *

18 B. Mitigation, which may be required by the DOTD, may be determined
19 through a complete traffic impact study and/or traffic signal study review process.
20 Required mitigation shall be reviewed by the district engineer administrator. Any
21 required mitigation shall be noted on the ~~permit~~ permit(s) as required in accordance
22 with DOTD policies, and bond amounts shall be appropriate for such mitigation, if
23 required.

24 * * *

25 §1541. Appeals Process

26 * * *

27 B. Appeals shall be filed in accordance with the DOTD appeals policies
28 ~~set forth in LAC 70:1.1101 et seq.~~

1 BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the
2 Office of the State Register.

3 BE IT FURTHER RESOLVED that the Office of the State Register is hereby
4 directed to have the amendments to LAC 70:I.1501(C), 1515(D), (G), (H), (I), (J), and (K),
5 1519(B), (C), and (D), 1521(A)(2)(a)(introductory paragraph), (4), and (5), (B)(1), (4), and
6 (5), and (E), 1529(C), 1531(B), (C), (D), (E), and (F), 1533(E), 1535(B), and 1541(B) and
7 the enactment of LAC 70:I.1501(E) printed and incorporated into the Louisiana
8 Administrative Code.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Guinn

HCR No. 9

Present LAC 70:I.1501 specifies that incumbent with DOTD's obligation to protect the investment of the state in the highway system the DOTD can be restrictive with granting access connections.

Proposed LAC 70:I.1501 requires that the Department of Transportation and Development (DOTD), through its district administrators, be allowed to grant exceptions to the restrictions set forth in administrative rules for access connections based upon the uniqueness of the environment in which access is sought and that the DOTD policy referred to throughout DOTD administrative rules for access connections is available on the DOTD website.

Removes present language in LAC 70:I.1515(G) which requires that postconstruction inspections are mandatory for traffic generator access connections.

Present LAC 70:I.1515 requires that relocations or alterations of any access, approach, or other improvement constructed on the right-of-way shall require a new permit.

Proposed LAC 70:I.1515 requires that relocations or alterations of any access, approach, or other improvement construction on the right-of-way require a re-evaluation of the accession connection or connections, rather than a new permit.

Present LAC 70:I.1519(B) requires that if a property is being reconstructed/remodeled/redeveloped and contains an existing commercial access point then the owner shall submit a new application for an access connection permit which shall contain all information and documentation as described in present administrative rules.

Proposed LAC 70:I.1519(B) requires, rather than a new application, a request for a re-evaluation of the access connection be submitted with all information required by DOTD policies.

Present LAC 70:I.1519(C) requires that if a property owner reconstructs the access connection, a new access connection permit application shall be submitted.

Proposed LAC 70:I.1519(C) requires that, rather than a new application, a request for a re-evaluation of the access connection be submitted during this process in order to improve safety and operations.

Present LAC 70:I.1519(D) provides that if DOTD road maintenance and/or construction operations affect the condition or necessitate the reconstruction, improvement, modification, or removal of an existing access connection, a re-evaluation of the access connection geometrics, location, etc., shall be performed by the district traffic operations engineer. The access connection permit shall be re-issued according to the most current DOTD standards, and DOTD reconstruction efforts shall follow these standards. The cost to reconstruct the access connection to the right-of-way shall be borne by the DOTD. Any additional costs to improve on-site conditions shall be borne by the property owner.

Proposed LAC 70:I.1519(D) changes the present administrative rules from mandatory to permissive.

Present LAC 70:I.1521(A)(2)(a) provides that full access shall not be granted within the functional influence area of the intersection.

Proposed LAC 70:I.1521(A)(2)(a) specifies that full access may not be granted within the functional influence area of the intersection. Also, specifies that the influence area shall be defined in DOTD policies.

Present LAC 70:I.1521(A)(4) provides that if the subject property is located at the intersection of two routes, an access connection may be permitted on one of the routes. The determination of the access connection location shall be at the discretion of the DOTD according to this rule and other applicable DOTD policies.

Proposed LAC 70:I.1521(A)(4) specifies that if the subject property is located at the intersection of two routes, an access connection may be permitted on both routes, but one must be limited to right-in/right-out access. The determination of the access connection locations and restrictions on each shall be at the discretion of the DOTD according to this rule and other applicable DOTD policies.

Present LAC 70:I.1521(B) provides that the granting of access shall adhere to a certain decision hierarchy.

Present LAC 70:I.1521(B)(1) provides that each property or group of adjacent properties with a single owner or development plan shall be granted no more than one access point, unless certain other portions of administrative rules pertaining to traffic studies are completed and approved.

Proposed LAC 70:I.1521(B)(1) specifies that each property or group of adjacent properties with a single owner or development plan may, rather than shall, be granted no more than one access point, unless certain other portions of administrative rules pertaining to traffic studies are completed and approved.

Present LAC 70:I.1521(B)(4) requires a request for an access connection on a state route where alternative access connection opportunities exist on nonstate route(s) shall be accompanied by a traffic impact study.

Proposed LAC 70:I.1521(B)(4) specifies that a request for an access connection on a state route where alternative access connection opportunities exist on nonstate route(s) may, rather than shall, be accompanied by a traffic impact study according to DOTD policies.

Present LAC 70:I.1521(B)(5) in pertinent part, requires requests for access connections in excess of one access connection or for an access connection on a state route where nonstate route access exists must be reviewed and approved by the district engineer administrator. Such requests shall be accompanied by a traffic impact study.

Proposed LAC 70:I.1521(B)(5) retains present rule and specifies that such requests may, rather than shall, be accompanied by a traffic impact study.

Present LAC 70:I.1521(E) prohibits gates, fences, signage, landscaping, or other decorative or access-control features (i.e. gated subdivision) from being located within the right-of-way. Requires such access-control features to be located so that a minimum storage of two vehicles (50' storage length minimum) is provided outside of the limits of the right-of-way.

Proposed LAC 70:I.1521(E) requires such-access control features to be located at a 50' storage length minimum and that greater distances may be required by the DOTD.

Present LAC 70:I.1529 provides that all access on roadways with medians may be restricted to right-in/right-out movements only, and shall be constructed in such a way as to prevent any other movements.

Proposed LAC 70:I.1529 specifies that if required these access points shall be constructed in such a way as to prevent any other movements.

Present LAC 70:I.1531(B) provides that all single-family residential and traffic generator access connections shall be constructed with permanent hard surface type materials (i.e. asphalt or concrete) as shown on the standard plans for access connections. Aggregate access connections shall not be permitted within the right-of-way for these types of connections. The hard surface type materials shall extend the following distances from the edge of pavement:

- (1) single-family residential access connections: 10 feet from the edge of pavement; and
- (2) traffic generator access connections: 25 feet from the edge of pavement.

Proposed LAC 70:I.1531(B) modifies the present rule by specifying that all traffic generator access connections shall be constructed with permanent hard surface type materials (i.e. asphalt or concrete) for a distance shown in DOTD policy. Also, removes the requirement that the hard surface type materials shall extend certain distances from the edge of the pavement on single-family residential access connections and traffic generator access connections.

Present LAC 70:I.1531(C) provide that non-commercial agricultural operations may not be required to be constructed of hard surface type materials.

Removes present LAC 70:I.1531(C).

Present LAC 70:I.1531(D) provides that all entrances and exits shall be located so that drivers approaching or using them will have adequate sight distance in all directions along the highway in order to maneuver safely and without interfering with traffic. Minimum required sight distance shall be calculated using the methods outlined in the AASHTO Geometric Design Guide for sight distance based on the posted speeds of the adjacent roadway or a speed other than the posted speed limit for these calculations.

Proposed LAC 70:I.1531(D) modifies the present rule by specifying that the minimum required sight distance shall be calculated using the methods outlined DOTD policies.

Present LAC 70:I.1533(E) provides that the services of an independent DOTD-approved inspector shall be obtained to inspect the construction of all DOTD-required improvements in the DOTD right-of-way.

Proposed LAC 70:I.1533(E) specifies that the services of an independent DOTD-approved inspector may be required to inspect the construction of all DOTD-required improvements in the DOTD right-of-way.

Present LAC 70:I.1535(B) provides that any required mitigation shall be noted on the permit, and bond amounts shall be appropriate for such mitigation.

Proposed LAC 70:I.1535(B) specifies that any required mitigation shall be noted on the permit(s), as required in accordance with DOTD policies, and bond amounts shall be appropriate for such mitigation, if required.

Present LAC 70:I.1541 requires that appeals must be filed in accordance with the DOTD appeals policies as set forth in current administrative rules.

Proposed LAC 70:I.1541 removes the requirement that appeals must be filed in accordance with current administrative rules.

Directs the office of the state register to print the amendments to LAC 70:I.1501(C), 1515(D), (G), (H), (I), (J), and (K), 1519(B), (C), and (D), 1521(A)(2)(a)(intro. para.), (4), and (5), (B)(1), (4), and (5), and (E), 1529(C), 1531(B), (C), (D), (E), and (F), 1533(E), 1535(B), and 1541(B) and the enactment of LAC 70:I.1501(E).

(Amends LAC 70:I.1501(C), 1515(D), (G), (H), (I), (J), and (K), 1519(B), (C), and (D), 1521(A)(2)(a)(intro. para.), (4), and (5), (B)(1), (4), and (5), and (E), 1529(C), 1531(B), (C), (D), (E), and (F), 1533(E), 1535(B), and 1541(B); Adds LAC 70:I.1501(E))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Transportation, Highways and Public Works to the original bill.

1. Made technical changes.
2. Removed changes to single access connection administrative rules and the repeal of the requirement for traffic studies.
3. Added that DOTD, through its district administrators, may grant exceptions to the restrictions set forth in current administrative rules based upon the uniqueness of the environment in which access is sought and that the DOTD policy referred to throughout DOTD access management rules is available on the DOTD website.
4. Made changes to additional DOTD administrative rules pertaining to access connection requirements; including, permit conditions and reapplications, access connections on certain roadways, design and construction requirements, improvements to adjacent transportation systems, and the appeals process.
5. Made traffic studies permissive rather than mandatory.