Statement of Intent:
Incorporating Automated Vehicles into the Oregon’s Vehicle Code

The Subcommittee on Vehicle Code Amendments and Public Safety recommends that the existing laws for conventional vehicles and driving roles should remain intact and separate from statutes created to support the deployment of highly automated vehicles (HAVs). First, we recognize the need to clarify definitions and user roles in relation to HAVs. However, we are concerned that the language necessary to define roles and responsibilities related to HAVs will not seamlessly integrate into the existing laws and conventional definitions. Finally, we are also concerned that if Oregon attempts to combine conventional and HAV definitions for important terms such as driver, operator, and passenger, we may weaken existing definitions and create conflict between statute and existing case law.

The Subcommittee on Vehicle Code Amendments and Public Safety recognizes that Oregon’s existing statutes and case law for conventional vehicles were developed long before the advent of highly automated vehicles (HAVs), and that this new technology creates new concepts and roles never anticipated. The Subcommittee recommends that new language be included in the Vehicle Code to address roles and definitions that are unique to HAVs. It is important to ensure that these new concepts do not undermine the established statutes and case law designed for conventional vehicles. It is equally important to ensure that existing law continues to apply to automated vehicles wherever appropriate.

Currently, the Vehicle Code does not contemplate a situation in which an automated driving system (ADS), rather than a human driver, is in control of a vehicle. The deployment of HAVs will necessitate the incorporation of new concepts and language into the Vehicle Code. For example, Oregon may want to create a definition for a “fallback-ready user,” a human being seated in the driver’s seat of a Level 3 automated vehicle; the fallback-ready user may not be in control of the vehicle but must be prepared at all times to retake control if alerted by the ADS. Existing terminology, such as “driver,” “operator,” or “passenger,” does not clearly encapsulate the role and responsibilities of a “fallback-ready user.” The Vehicle Code needs to include new language that clearly delineates the distribution of responsibilities between human users and HAVs with different levels of automation.

However, we are concerned that it may not be possible to smoothly integrate HAV-specific language into our existing laws and conventional definitions. For example, in Oregon the act of “driving” arguably requires a person to exercise “actual physical control” over a vehicle. It is unclear how this requirement would apply to an automated driving system or a remote operator, both of which control a vehicle’s movement without operating the physical mechanisms, such as a steering wheel or pedals, that a conventional driver would use.
We are also concerned that integrating new HAV-specific definitions into the current Vehicle Code will require caution and precision. If certain new definitions created for HAVs could be applied to conventional vehicles, this may undermine the strength of existing definitions or create a conflict between statute and case law. For example, the terms “drive” and “driver” are not defined in the Vehicle Code, but decades of case law have clarified the meaning of “driver” for specific purposes. State v. Cruz (1993) established the meaning of “driver” for the purposes of DUII violations, and other case law has clarified the meaning of “driver” for the purposes of insurance. Creating a definition of “driver” that incorporates HAV considerations or amending other existing definitions to address HAVs could interfere with established case law around issues such as DUIIs and insurance. This could have unintended consequences for cases pertaining to conventional vehicles.

The Subcommittee also recognizes that many existing statutes and related case law will be applicable to HAVs and should therefore pertain to both HAVs and conventional vehicles. For example, HAVs will need to follow the rules of the road, stop at stop signs, and obey speed limits, just as drivers of conventional vehicles are required to do. While some laws may need to be amended to accommodate ADS operation, many laws should continue to be enforced for both automated and conventional vehicles.

The Subcommittee has also considered how personal liability principles should apply to HAV deployment. Recognizing the ability of Oregon’s tort law to adapt to new technologies, there is no clear need, at this time, to define duties, causes of action, or remedies beyond existing concepts. Oregon has historically accomplished this through the organic common law process. Regarding liability insurance requirements, the Task Force on Autonomous Vehicles has already made recommendations for minimal coverage requirements for testing purposes, and they seem appropriate for deployment as well. The Subcommittee believes that existing laws defining the obligations to maintain insurance and how and when coverages apply are currently adequate. As the relationships between the various entities—owners, operators, manufacturers, insurers—develop, the insurance industry will need to create new products to accommodate those relationships and meet existing financial liability requirements to protect the general public.

Therefore, the Subcommittee believes the Legislature should exercise extreme caution when deciding how to incorporate new definitions related to HAV technology and user roles into the Vehicle Code. The Subcommittee recommends creating a separate section of the Vehicle Code to address HAVs. This approach would allow for the creation of new terms and definitions tailored for HAV operation, and it would also preserve and protect the existing case law around conventional vehicles—ensuring the new HAV-specific language does not adversely affect the governance of conventional vehicles, and applying existing laws to HAVs wherever appropriate.