

COMMITTEE ON JUDICIARY
Room 14, State Capitol
Salem, Oregon

O R E G O N V E H I C L E C O D E

PART III RULES OF THE ROAD

ARTICLE 15 . POWERS OF STATE AND LOCAL AUTHORITIES

Preliminary Draft No. 2; August 1974

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Subcommittee on Revision

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regarding this draft, please bring
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OREGON VEHICLE CODE

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PART I. -- RULES OF THE ROAD

PART III. RESPECTIVE POWERS OF STATE AND LOCAL AUTHORITIES

ARTICLE 15. POWERS OF STATE AND LOCAL AUTHORITIES

Preliminary Draft No. 2; August 1974

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Section 1. (Provisions uniform throughout state.) (1) The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and on the ocean shore which has been or may hereafter be declared a state recreation area, and no local authority may enact or enforce any rule or regulation in conflict with the provisions of this chapter except as specifically authorized in this chapter.

COMMENTARY

A. Summary

This section is a restatement of subsection (1) of ORS 483.036 that traffic law is to apply throughout the state and provisions inconsistent with the chapter may not be enacted by local authorities and subsection (1), ORS 483.042, prohibiting local authority from enacting any conflicting rules unless specifically authorized.

B. Derivation

This section is based on UVC § 15-101 (Revised, 1971).

C. Relationship to Existing Law

ORS 483.036 and 483.042 would be repealed. The provisions of subsections (1) and (2) of ORS 483.036 and subsection (1), ORS 483.042, are restated in this draft section. The provisions of subsection (2), ORS 483.042, granting power to local authorities to regulate traffic where it is heavy or continuous, require one-way traffic.

Regulation of highway use by assemblages is covered in later sections of this draft Article. The provisions of subsection (3), ORS 483.042, are restated in draft section 9, and those of subsection (4) in section 1 of the draft Article on Signs, Signals and Markings.

The rule of this draft section allows local authorities to enact regulations which are not in conflict with the provisions of ORS chapter 483. Supplementary, but non-conflicting provisions, are common. Furthermore, cities can duplicate state laws by ordinance under the rule of ORS 483.042.

The provisions of both ORS 483.036 and 483.042 were interpreted in Winters v. Bisailon, 152 Or 578, 54 P2d 1169 (1936). The court held that a municipal ordinance restricting motor vehicle speed within the city limits was in conflict with the state statute requiring reasonable speed, and hence invalid. Local authorities may not curtail, infringe upon or annul state law regulating traffic.

This principle was further developed in Ceccacci v. Garre, 158 Or 466, 76 P2d 283 (1938), a case which involved a parking ordinance prohibiting parking more than one foot from the curb. The court held that since there was no legislation prescribing the manner in which motor vehicles should be parked in a business district in a city, a city ordinance in this area did not curtail, infringe upon or annul any general law, was not inconsistent with state statute, and therefore valid.

The analogous UVC provision prohibits the local authority from enacting or enforcing any ordinance on a matter covered by the UVC rules. Hence, ordinances duplicating any subject covered by a state law would be invalid.

Under ORS 8.660, requiring prosecution of all state offenses in all courts to be conducted by a district attorney, and the ruling of the Attorney General that a city attorney cannot also be a deputy district attorney, Atty Gen Op 226 (1943), city attorneys can prosecute for a violation of a state law committed within the city only if the pertinent state law has been enacted as a city ordinance. UVC § 15-101 would prohibit this.

The provisions of draft section 15 of this Article would amend ORS 484.030 to authorize a city attorney to prosecute in a city court in a trial of a state traffic offense.

(Alternate) Section 1. (Provisions uniform throughout state.)

The provisions of this Act shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and on the ocean shore which has been or may hereafter be declared a state recreation area, and no local authority shall enact or enforce any ordinance on a matter covered by the provisions of this Act unless expressly authorized.

COMMENTARY

A. Summary

This section would require that the provisions of the UVC chapter, namely, the rules of the road, shall apply and be uniform throughout the state and second, that local authority may not enact or enforce any ordinance on a subject covered by this chapter unless there is an express statutory authorization.

B. Derivation

The section is based on UVC § 15-101 (Revised, 1971).

C. Relationship to Existing Law

This proposed section would bring about a material change in the rule in this area as stated in ORS 483.036 and subsection (1), ORS 483.042, which allow local authorities to enact and enforce rules in the area of the rules of the road so long as the rules do not conflict with and are not contrary to state statute. Local authority may, notwithstanding, enact rules in conflict with state statute when there is a specific authorization to do so. Although ORS 483.036 states no exception to the prohibition to the local authority to enact conflicting rules even when expressly authorized, this omission in ORS 483.036 is cured by the provision of ORS 483.042.

The provisions of both ORS 483.036 and 483.042 were interpreted in Winters v. Bisailon, 152 Or 578, 54 P2d 1169 (1936). The court held that a municipal ordinance restricting motor vehicle speed within the

city limits was in conflict with the state statute requiring reasonable speed, and hence invalid. Local authorities may not curtail, infringe upon or annul state law regulating traffic.

This principle was further developed in Ceccacci v. Garre, 158 Or 466, 76 P2d 283 (1938), a case which involved a parking ordinance prohibiting parking more than one foot from the curb. The court held that since there was no legislation prescribing the manner in which motor vehicles should be parked in a business district in a city, a city ordinance in this area did not curtail, infringe upon or annul any general law, was not inconsistent with state statute, and therefore valid.

Until 1968, UVC § 15-101 contained a concluding sentence which allowed local authorities to adopt traffic regulations not in conflict with state law. This permissive provision was deleted by the 1968 revision of UVC § 15-101 so that the UVC rules would have statewide pre-emptive application. The 1968 revision reflects the recommendation of the National Committee that there be one comprehensive traffic law of statewide application and ordinances should not conflict with, duplicate or cover any matter adequately encompassed in a state provision.

Six states, according to Traffic Laws Annotated, 1973 Supplement, have laws in conformity with UVC § 15-101. Oregon's law is identical to the 1930 version of the UVC provision except for the omission of the concluding phrase, "unless expressly authorized herein." Eighteen states have laws identical to the 1934-1962 editions of the code which allow local regulations not in conflict with state law unless expressly authorized.

UVC § 15-101 was originally directed at making the rules of the road uniform throughout a state. The rules of the road were one of five Acts comprising the code. In 1954 the five Acts comprising the code were consolidated into a single document and the reference to "Act" was replaced by reference to the chapters of the UVC on accidents and accident reports, rules of the road, equipment on vehicles, inspection of vehicles, and size, weight and load. In 1971, UVC § 15-101 was revised to delete the references to specific chapters so that the entire UVC has statewide pre-emptive application.

Section 2. (Transportation Commission to adopt sign manual.)

The Transportation Commission shall adopt a manual and specifications of uniform standards for traffic control devices consistent with the provisions of this chapter for use upon highways within this state.

COMMENTARY

A. Summary

The Transportation Commission is required to adopt a manual and specifications of uniform standards for traffic control devices consistent with ORS ch 483.

B. Derivation

This section is based on UVC § 15-104 but does not include the UVC requirement that the standards conform as much as possible to the standards endorsed by the Federal Highway Administrator.

C. Relationship to Existing Law

ORS 483.040, subsection (1), is verbatim identical to the 1930 version of this rule. Its authorization to classify and mark highways in the state and provide a uniform system of marking was restated as in this draft section in the 1934 version of the UVC. The UVC requirement of conformity to national standards was deleted to avoid possible adoption of standards which the State Transportation Commission would not favor.

The provisions of subsection (2), ORS 483.040, are set out in the following draft section.

In Lovins v. Jackson, 233 Or 369, 378 P2d 727 (1963), the provisions of ORS 483.040 authorizing the State Highway Commission to provide a uniform system of marking and signing highways were held not to state or to infer that sign regulations adopted by the Highway Commission set safety standards such that a violation would be negligence per se.

Section 3. (Authority of Transportation Commission to mark highways and control traffic.) (1) Except at railroad-highway grade crossings, the Transportation Commission is vested with exclusive jurisdiction over placing, constructing and maintaining official traffic control devices upon state highways and upon those portions of the ocean shore declared to be state recreation areas. Traffic control devices shall conform to the commission's manual and specifications as described in section 2 of this Article both in design and in the manner of placing and construction. The commission shall place and maintain such traffic control devices on state highways and ocean shore recreation areas where the commission determines such devices are necessary to carry out the provisions of this chapter or to regulate, warn or guide traffic.

(2) When a local authority makes a determination that placement or construction of a traffic control device on a state highway also under the jurisdiction of the local authority is necessary to carry out the provisions of this chapter or to regulate, warn or guide traffic, the local authority shall submit to the Administrator of Highways, its written findings and recommendation in support of placing or constructing the traffic control device on the state highway. If the Administrator of Highways approves of the findings and recommendations of the local authority, he shall so notify in writing the local authority and proceed to place or construct the traffic control device. If the administrator fails to notify the local authority of approval within 65 days of receiving its findings and recommendations, the administrator shall be considered to have disapproved the recommendations.

(3) When a traffic control device is placed on a state highway which is located within the corporate limits of a municipality, but is not a controlled access highway, or which is under the joint jurisdiction of the State Transportation Commission and a county governing body the administrator shall, unless the parties agree otherwise:

(a) Apportion the costs of placing or constructing the traffic device to the Transportation Commission; and

(b) Apportion 50 percent of the maintenance costs to the local authority and 50 percent to the Transportation Commission.

(4) In the event any traffic control device is to be placed or constructed on a state highway within the incorporated limits of a municipality or under joint jurisdiction with a county governing body, with the aid of any federal funds allocated specifically for removal of highway hazards, the administrator shall apportion the amount of such federal funds to payment of placing or construction costs.

(5) The provisions of this section are to be interpreted as consistent with the authority of the Public Utility Commissioner over railroad-highway grade crossings as provided in this chapter and in ORS chapter 763.

COMMENTARY

A. Summary

Subsection (1) provides that the Transportation Commission has exclusive jurisdiction over the placing and maintaining of traffic control devices on state highways including ocean shore recreation area. The devices are to conform to the Commissioner's manual

and specifications, and be placed where the commission determines they are necessary to carry out chapter provisions or regulate traffic. Railroad-highway grade crossings are excepted from the Transportation Commission's jurisdiction.

Subsection (2) provides that where a state highway is also under the jurisdiction of a local authority and the local authority determines that a traffic control device is necessary to carry out chapter provisions or guide and warn traffic, the local authority shall submit its written findings and recommendations to the Highway Administrator who, if he approves them, shall give written notification to the local authority and shall place the traffic device. If no notification of approval is given within 65 days, the administrator shall be considered to have disapproved the local authority's findings.

Subsection (3) provides that in the joint jurisdiction circumstances of subsection (2), the placing or construction cost shall be paid by the Transportation Commission and the maintenance costs split between the commission and local authority.

Subsection (4) provides that if federal funds are available they shall be used to pay the cost of placing or constructing the device.

Subsection (5) provides that the provisions of the section are consistent with the Public Utility Commissioner's authority over railroad-highway grade crossings.

B. Derivation

The basic outline of this draft section resembles UVC § 15-105 but this draft section also purports to allocate responsibility for placing and maintaining, and paying for, traffic control devices on state highways under joint jurisdiction with a local authority.

C. Relationship to Existing Law

Subsection (2), ORS 483.040, is verbatim the same as the 1930 version of UVC § 15-105 except for the exception of railroad-highway grade crossings which by enactment of ch 615, Oregon Laws 1973, were put under PUC jurisdiction. The current version of UVC § 15-105, revised in 1934, authorizes the state agency to place and maintain traffic control devices on state highways, the devices to conform to the state manual and specifications, under the same guidelines as are stated in this draft section.

Authority in this draft section is stated as exclusive jurisdiction. Authority in UVC § 15-105 is stated as mandatory, whereas authority in subsection (2), ORS 483.040, is discretionary.

Subsections (2), (3) and (4) of this draft section expand the rule of the concluding sentence of subsection (2), ORS 483.040, on the relation of the local authority and the Administrator of Highways for responsibility for traffic control devices under the joint jurisdictions of state and local authorities. The local authority may not place a traffic control device on a state highway under the joint jurisdictions. It must submit findings for the placing or constructing of the device to the administrator who, if he approves, proceeds to place or construct the device. There are no provisions for appeal of the administrator's decision. Subsections (3) and (4) provide that placing cost be paid by the administrator and maintenance cost split fifty-fifty between state and local, and federal funds available for placing and constructing be so used. These cost allocation provisions are similar to those of ORS 763.260 wherein the Public Utility Commissioner allocates costs of removing hazards at railroad-highway grade crossings involving state highways.

The provision of subsection (5) that the draft section is consistent with the PUC authority over railroad-highway grade crossings probably has little meaning if the PUC authority under ORS ch 763 is limited by section 4 of this draft Article to the placing of protective devices only on the right of way of the railroad.

Section 4. (Authority of Public Utility Commissioner over railroad-highway crossings.) (1) As used in subsection (2) of this section, "protective device" is a sign, signal, gate or other device to warn or protect the public, installed at a railroad-highway crossing.

(2) The Public Utility Commissioner is vested with exclusive jurisdiction over the installation of protective devices within the railroad right of way of railroad-highway grade crossings.

COMMENTARY

A. Summary

This section radically amends the rule of subsection (3), ORS 483.040 (ch 615, Oregon Laws 1973), which vested authority over railroad-highway grade crossings, including the placing of advance warning signs on highways, in the Public Utility Commissioner. This section limits the commissioner's control to direct installation of protective devices to the railroad right of way.

B. Derivation

Not based on UVC. Radically restricts Public Utility Commissioner's authority under subsection (3), ORS 483.040.

C. Relationship to Existing Law

Under ch 615, Oregon Laws 1973, jurisdiction over railroad-highway grade crossings was vested in a single state agency. Prior to the enactment of that law, the cities and counties had control over the placing of signs and signals at crossings on highways under their relative jurisdictions, and State Highway Commission, now the Transportation Commission, on crossings of state highways at grade with railroads. Under the provisions of ORS ch 763, prior to enactment of chapters 615 and 717, Oregon Laws 1973, upon complaint by a city or county or five or more freeholders to the Public Utility Commissioner that a crossing was dangerous, the commissioner, after hearing, might find the crossing dangerous and order signs and signals to be installed, and apportion the costs between the railroad and the public, and in no event more than 50 percent to the public. Section 8 of ch 615, Oregon Laws 1973, ORS 763.110, authorizes the commissioner to

prescribe the number, kind and location of advance warning signs to be installed on the highway in advance of a railroad-highway grade crossing. The signs are to conform to Department of Transportation standards. Under section 7, ch 717, Oregon Laws 1973, compiled as ORS 763.080, in subsection (3) thereof, it is provided that the authority granted to the commissioner by the chapter is in addition to and not instead of the authority of the State Highway Commission, now the Transportation Commission, or any city or county to use other remedies to provide public highways for the traveling public. ORS chapter 717 established a Grade Crossing Protection Account to be used for railroad-highway crossing safety, up to a maximum of \$100,000 per fiscal year. Finally, under section 7, ch 615, Oregon Laws 1973, (ORS 763.013), the policy of the state to achieve uniform coordinated railroad-highway crossings is enunciated, and the exclusive vesting of authority for this end to the state and in the Public Utility Commissioner is provided in ORS chapter 763.

In Southern Pacific Transp. Co. v. Sabin, 97 Adv Sh 1246, ___ Or ___, 513 P2d 500 (1973), the Public Utility Commissioner's authority under ORS 763.170 to order a railroad to pay half the cost of installing control signal outside the railroad right of way was upheld on the theory that a restrictive interpretation of ORS 763.170, restricting authority to the right of way, would make the commissioner powerless to correct dangerous situations where warning devices would be ineffective unless placed off the right of way.

Section 5. (Control of traffic control devices by local authorities.) (1) Subject to the provisions of sections 3 and 4 of this Article, local authorities shall place and maintain traffic control devices upon highways, exclusive of state highways, under their respective jurisdictions as they consider necessary to carry out the provisions of this chapter or local traffic ordinances or to regulate, warn or guide traffic. All traffic control devices shall conform to the state manual and specifications.

(2) The Transportation Commission shall have general supervision with respect to the placing, constructing and maintenance by local authorities of official traffic control devices for the purpose of obtaining, so far as practicable, uniformity as to type and location of such devices throughout the state.

(3) Official traffic control devices placed or constructed by local authorities after the effective date of this Act shall conform to specifications and location criteria approved by the commission.

(4) Any new or amended specifications and location criteria approved by the commission after the effective date of this Act for the placement or construction of an official traffic control device do not apply to official traffic control devices in place on the effective date of this Act. However, within a reasonable period after the effective date, official traffic control devices shall be altered or relocated to comply with the manual and specifications approved after the effective date of this Act. The commission shall publish a schedule for maintenance replacement of official traffic control devices whereby replacements shall be made by local authorities in accordance with the replacement or maintenance schedule.

(5) Priorities for such replacement or maintenance schedule shall be established by the commissioner based upon the expressed need of the public and upon such other factors as danger or inconvenience to motorists, age of the device, frequency of reported accidents and degree of noncompliance with the directions of the device.

COMMENTARY

A. Summary

Subsection (1) provides that subject to the provisions of sections 3 and 4 of the Article, local authorities shall place and maintain traffic control devices on highways under their respective jurisdictions as considered necessary to carry out the chapter provisions and regulate traffic. The devices shall conform to the state manual and specifications.

Subsection (2) gives the Transportation Commission general supervision over placing and constructing and maintenance by local authorities of official traffic control devices to obtain statewide uniformity.

Subsection (3) provides that official traffic control devices placed or constructed by local authorities after the effective date of the Act must conform to Transportation Commission specifications.

Subsection (4) provides that new or amended specifications approved by the Transportation Commission after the effective date of the Act don't apply to official traffic control devices in place at the effective date of the Act, but such non-conforming devices must be altered to conform to the specifications within a reasonable time after that date. The Transportation Commission shall publish a maintenance replacement schedule to apply to local authorities.

Subsection (5) sets forth a list of factors to be considered by the commission in establishing the maintenance schedule.

B. Derivation

Subsections (1) and (2) are based on UVC § 15-106. Subsections (3), (4) and (5) are similar to the provisions of ORS 763.055 wherein the specifications for construction

and maintenance of railroad-highway grade crossings developed by the Public Utility Commissioner are not to apply to existing crossings except after a reasonable time from the effective date of the law, and priorities for alteration or reconstruction should be established based on factors therein stated similar to those of subsection (5) of this section.

C. Relationship to Existing Law

The provisions of subsections (1) and (3), ORS 483.044, are almost verbatim the same as the 1930 version of the rules of subsections (a) and (b) of UVC § 15-106. The draft section states the rule of subsection (1) in the present UVC form with the addition of the exclusion of state highways. The rule of subsection (2), ORS 483.044, is deleted as stating a rule which appears without use or purpose. The provisions of subsection (3), ORS 483.044 are broken down into those of subsections (3), (4) and (5) of the draft section to incorporate a grandfather clause which sets a maintenance replacement schedule according to which local authorities have some leeway in bringing their traffic control devices into conformity with state standards as set by the Transportation Commission. The commission is given a set of factors to consider in establishing a maintenance replacement schedule for the local authorities.

The exception of subsection (3), ORS 483.044, for cities of population over 50,000 to the supervisory authority of the state over local authorities is removed by this draft section.

In Southern Pacific Transp. Co. v. Sabin, 97 Adv Sh 1246, Or, 513 P2d 507 (1973), it was held that notwithstanding the provisions of subsection (1), ORS 483.044, giving local authorities jurisdiction to install traffic signals in their jurisdictions, a railroad can be ordered to install a traffic signal outside of its right of way, and, furthermore, to pay half the cost of installation of traffic control signals installed by the county even though the county could not be ordered by the Public Utility Commissioner to make the installation. Ordering the railroad to pay half the cost is equivalent to ordering the railroad to install the signal, which is within the Public Utility Commissioner's authority under ORS 763.170.

Section 6. (Regulation of pedestrian traffic by local authorities.)

Local authorities by ordinance may regulate the movement of pedestrians upon highways within their jurisdictions by:

- (1) Establishing marked crosswalks and designating them by appropriate marking;
- (2) Closing a marked or unmarked crosswalk and prohibiting pedestrians from crossing a roadway where a crosswalk has been closed by placing and maintaining signs giving notice of closure; and
- (3) Prohibiting pedestrians from crossing a highway at any place other than within a marked or unmarked crosswalk.

COMMENTARY

A. Summary

This section states the authority of local authorities over the regulation of pedestrian traffic.

B. Derivation

The section is based on UVC s 15-107 (Revised, 1968) and UVC s 15-108 (New, 1968).

C. Relationship to Existing Law

The authority to regulate pedestrian traffic of subsections (4) and (6), ORS 483.210, are stated in this draft section. Similar authorization is stated in UVC ss 15-107 and 15-108. ORS 483.210 would be repealed.

Subsection (2), ORS 483.212, authorizes local authorities to require that pedestrians not cross a roadway against a "stop" signal at intersections controlled by police officers and further that where a signal change is augmented by a ringing bell the pedestrian shall proceed across the roadway with the first ring. Subsection (2), ORS 483.212, is obsolete. The section would be repealed.

Section 7. (Speed regulation in public parks by local authorities.)

Local authorities by ordinance may regulate the speed of vehicles in public parks within their jurisdictions and shall place and maintain at all park entrances signs giving notice of any special speed regulation.

COMMENTARY

A. Summary

The speed of vehicles in a public park may be regulated by the local authority having jurisdiction over the park. The local authority shall place signs giving notice of speed regulations.

B. Derivation

This section is derived from the provisions of subsection (3), ORS 483.042.

C. Relationship to Existing Law

The rule of subsection (3) of ORS 483.042, which is restated in this draft section, is an exception to the speed-setting authorization laws whereby the State Transportation Commission sets speeds on state highways and the State Speed Control Board on all other highways. Under subsection (1), section 2 of the Article on Speed Restrictions, the maximum speed in public parks is 25 miles per hour unless a different speed is designated by state or local authorities as authorized by law and duly posted.

Case authority is cited in the Commentary following section 1 of this Article.

ORS 483.042 would be repealed by this draft section which states the rule of subsection (3). The rule of subsection (1) is stated in section 1 of this draft Article. The provisions of subsection (2) are stated in revised form in section 5 of this draft Article. The rule of subsection (4) is stated in section 1 of the Article on Signs, Signals and Markings.

Section 8. (Regulating use of freeway by parades, pedestrians.)

(1) The commission and local authorities with respect to a freeway under their respective jurisdictions may by order, ordinance or resolution prohibit or restrict the use of the freeway:

(a) By parades;

(b) By persons riding bicycles or other nonmotorized traffic, power driven cycles or motor bicycles; and

(c) By pedestrians, except to obtain emergency services for a disabled motor vehicle that is on the freeway.

(2) A regulation enacted under subsection (1) of this section shall be effective when appropriate signs giving notice thereof are erected upon any freeway and the approaches thereto.

COMMENTARY

A. Summary

The provisions of subsections (1) and (2), ORS 483.041, are restated to augment the traffic subject to restriction or prohibition on a freeway to extend to persons riding bicycles or other nonmotorized traffic, power driven cycles or motor bicycles. The definition of "freeway" is removed from the section for placement in the Article on definitions.

This draft section, in authorizing the prohibition of pedestrian traffic on a freeway, does not purport to ban hitchhiking on a freeway and is consistent with the hitchhiking provisions in the Article on Pedestrians' Rights and Duties.

B. Derivation

This section is based on Wis Stat Ann s 349.105 and UVC s 11-313. (Revised, 1968.)

C. Relationship to Existing Law

"Controlled-access highway" is defined in UVC s 1-110 as follows:

"Every highway, street or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street or roadway."

There is no definition for "freeway" or "controlled-access highway" in the initial definitions of ORS chapter 483.

"Throughway" is defined in ORS 374.010 as follows:

"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."

The provision of the UVC comparable to ORS 483.041 authorizes regulation or prohibition of any class or kind of traffic found incompatible with the normal and safe movement of traffic.

Section 9. (Authority to designate through highways and stop intersections.) The Transportation Commission with reference to state highways, and local authorities with reference to highways under their jurisdictions, may designate main traveled or through highways by placing at the entrances thereto from intersecting highways traffic control devices notifying drivers to stop or yield the right of way before entering or crossing such designated highways, or may designate intersections or other roadway junctions at which vehicular traffic on one or more of the roadways should yield or stop and yield before entering the intersection or junction.

COMMENTARY

A. Summary

This section authorizes designation of through highways and stop intersections by state and local authorities having jurisdiction of the highways.

B. Derivation

This section is based on UVC s 15-109. (Revised, 1971.)

C. Relationship to Existing Law

This section states the rule of subsection (1), ORS 483.204. The language is drawn from both the UVC and existing Oregon law provisions.

The rule of subsection (1), ORS 483.204, authorizing the commission to designate through highways by placing signs was interpreted in Ashland v. Pacific P. & L. Co., 239 Or 241, 395 P2d 420, 397 P2d 538 (1964). The court held that the violation by an employe of the Highway Commission of a regulation adopted by the commission pursuant to the general authority of ORS 483.204, is not a violation of a safety regulation directed toward the safety of the public. The regulation made pursuant to ORS 483.204 does not have the force or effect of law. The commission's employe violating a regulation adopted pursuant to ORS 483.204 did not violate a duty owed to a member of the public. The duty is upon the commission employes, for the commission's benefit.

Section 10. (Authority to designate no-passing zones.) The Highway Division and local authorities with reference to highways under their respective jurisdictions may determine, in accordance with standards and procedures adopted by the division, where overtaking or passing or driving to the left of the center of the roadway would be especially hazardous and may, by appropriate signs or by a yellow unbroken line on the pavement on the right-hand side of and adjacent to the center line or a lane line of a roadway, indicate the beginning and end of such zones.

COMMENTARY

A. Summary

The designation of no-passing zones is authorized.

B. Derivation

The section is based on Wis Stat Ann s 349.12 and UVC s 11-307 (a). (Revised, 1971.)

C. Relationship to Existing Law

This authorization provision relates to the statement of the offense or traffic infraction of passing in a no-passing zone. There is not a no-passing zone provision in the existing Oregon traffic code.

Section 11. (Authority to designate one-way highways, safety zones, turns and lanes.) (1) The Transportation Commission with reference to state highways and local authorities with reference to highways under their jurisdictions may:

(a) Declare by order, ordinance or resolution and designate by appropriate signs any highway or section or specific lanes thereof upon which vehicular traffic shall proceed in one direction at all or such times as may be indicated by official traffic control devices;

(b) Designate by official traffic control devices certain places on highways as safety zones and regulate and control traffic with respect to such safety zones;

(c) Where traffic conditions warrant, prohibit right or left turns at intersections or prohibit U-turns by all vehicles or by certain types of vehicles; and

(d) Place official traffic control devices within or adjacent to intersections and thereby require and direct that a different course from that specified in [section 1, Article ____, Turning and Moving; Signals on Stopping and Turning] be traveled by vehicles making turning movements at, or proceeding through, intersections.

(2) No local authority of any incorporated city shall designate any highway within its incorporated limits as a one-way highway if the highway is under the jurisdiction of the Transportation Commission or of a county unless the local authority first obtains the written consent of the commission or the county court or board of county commissioners, as the case may be.

COMMENTARY

A. Summary

This section authorizes the Transportation Commission and the local authorities having jurisdiction to designate one-way highways and lane directions, to designate and maintain safety zones, to prohibit turns at intersections and U-turns, to require a different course from the rules of proceeding at intersections of section 1 (Article on Turning and Moving; Signals on Stopping and Turning). A city may not designate a city highway under state or county jurisdiction as one-way without written consent of the Transportation Commission or county governing authority.

B. Derivation

This section is based on Wis Stat Ann § 349.10 and UVC §§ 11-309 (c) (New, 1962) and 11-601 (c). (Revised, 1971.)

C. Relationship to Existing Law

Subsection (2) of ORS 483.042 authorizes local authorities to regulate traffic by means of traffic officers, semaphores or other signals when traffic is heavy or continuous, and to prohibit "other than one-way traffic." ORS 483.043 authorizes municipalities to designate one-way streets within the city limits. If the county or Department of Transportation has jurisdiction of the highway in the city limits, the written consent must be obtained. ORS 483.042 and 483.043 would be repealed.

Paragraph (a), subsections (1) and (2) of the draft section, state the one-way authorizations. The provisions of subsection (c), UVC § 11-309, authorizing designation of direction of travel in particular lanes, are also stated in paragraph (a) of subsection (1).

The rules of subsections (2) and (3), ORS 483.316, authorizing the placing of traffic signs to require a different course from the right and left turn rules of subsection (1), ORS 483.316, and to prohibit right or left turns, are contained in paragraphs (c) and (d) of subsection (1) of the draft section.

The Transportation Commission and not the Department of Transportation would be the state entity authorized to declare highways as one-way.

ORS 483.316 would be repealed.

Section 12. (Authority of municipalities and counties to control parking on city, county and state highways.) (1) The municipal authorities of incorporated cities and towns shall have exclusive authority to regulate, control or prohibit the parking of motor vehicles upon any city street or highway, including any city street selected and designated as the route of a state highway under ORS 373.010, and subject to the provisions of ORS 483.346, upon any state highway within the corporate limits of an incorporated city or town.

(2) The governing authorities of the counties shall have exclusive authority to regulate, control or prohibit the parking of motor vehicles upon any county highway.

(3) Local authorities, city and county, may permit angle parking on any highway where parking is subject to their respective jurisdictions, except that angle parking shall not be permitted unless the Transportation Commission has determined that the highway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

COMMENTARY

A. Summary

Cities have exclusive authority to regulate parking on city streets, including those designated as a state highway route under ORS 373.010, and on state highways within the incorporated limits of the cities, subject to the rules of ORS 483.346. Counties have jurisdiction over parking regulations on county highways.

Subsection (3) authorizes local authorities to permit angle parking except on the highways designated a part of the state highway system, unless the Transportation Commission has determined the highway is not sufficiently wide to allow angle parking.

B. Derivation

This section is based on the rules of ORS 483.350 except that the rule relating to angle parking is stated in the same manner as the comparable rule in UVC s 11-1004 (c). (Revised, 1971.) The provision relating to jurisdiction of counties over county roads is new.

C. Relationship to Existing Law

Under ORS 483.350 there is no specific authorization for cities to control and regulate parking on city streets. This draft section states this specific authorization and also the authorization over city streets designated as state highway routes, and state highways, subject to the provisions of ORS 483.346 which states the authority of the Transportation Commission over parking regulations on state highways, within and outside of cities.

Authorization to county governing bodies to regulate parking on county roads is added to the rules of ORS 483.350, in conformance with the similar authorization of subsection (c), UVC s 11-1004.

The "Transportation Commission" is substituted for the "Department of Transportation" as the body responsible for determining when angle parking will not interfere with the free movement of traffic.

The draft section uses the term "motor vehicle," as does ORS 483.350, whereas the comparable UVC rules use the term "vehicle." A vehicle, of course, includes a bicycle whereas a motor vehicle does not.

ORS 483.350 would be repealed.

Section 13. ORS 483.346 is amended to read:

483.346. (Authority of Transportation Commission to control parking on state highways.) (1) The [Department of] Transportation Commission shall have exclusive authority to regulate, control or prohibit the parking of motor vehicles upon the right of way of any state highway outside the corporate limits of incorporated cities and towns, and upon the right of way of any section of any state highway within the corporate limits of any incorporated city or town, if access to or from said section of highway and real property abutting thereon was restricted, controlled or prohibited by the [department] commission before said section of highway was included within the corporate limits of an incorporated city or town [, and if said section of highway was included within the corporate limits of an incorporated city or town by incorporation, annexation or extension of corporate limits occurring after July 21, 1953].

(2) The commission shall also have authority to control parking on all state highways within the corporate limits of a city except where such highway is routed over a city street pursuant to ORS 373.010.

COMMENTARY

The existing provisions of ORS 483.346 establish a formula for the jurisdiction of the Department of Transportation, over state highways outside of and within city limits. The jurisdiction over state highways within city limits exists if the access rights were controlled by the department before that portion of highway was included within the city limits, and if that portion became included by annexation or incorporation after July 21, 1953. Under this formula the department does not have jurisdiction of parking regulations on state highways within city limits if there was no control of

access rights by the department and the highway was not included within the city by annexation or incorporation after 1953.

Regulation of parking on state highways located within city limits wherein the state owns the real property in fee is subject to the city's jurisdiction.

This amendment substitutes "Transportation Commission" for the "Department of Transportation," and deletes the proviso that the Transportation Commission's jurisdiction over state highways in city limits relates to annexation or incorporation into a city after July 21, 1953. It adds an additional subsection under the terms of which the commission has authority to control parking on state highways in city limits except where the state highway is routed over a city street.

In the UVC provisions analogous to sections 13 and 14 of this Article, which are found in subsections (c) and (d), UVC s 11-1004, the state agency controls parking on highways under its jurisdiction. Angle parking may not be permitted by a local authority on a state highway unless the state agency issues a written statement that the roadway is sufficiently wide to allow angle parking.

Section 14. ORS 483.348 is amended to read:

483.348. (Entry of commission's parking regulations in official records; erecting appropriate signs; regulations as having force of law.) (1) All regulations, restrictions or prohibitions imposed by the [Department of Transportation] Transportation Commission under authority of ORS 483.346 shall be by resolution or order entered in official records of the [Department of Transportation] Transportation Commission.

(2) The [department] commission shall place and maintain appropriate signs or markings giving notice of all such regulations, restrictions or prohibitions at such places as may be necessary to inform the public, and such regulations, restrictions or prohibitions shall be effective and shall have the force of law when the signs or markings giving notice thereof have been placed.

COMMENTARY

This section is amended as a matter of housekeeping to use the Transportation Commission instead of Department of Transportation.

Section 15. ORS 484.030 is amended to read:

484.030. (Jurisdiction of courts.) (1) A circuit or district court has concurrent jurisdiction of all state traffic offenses, except that the circuit court has exclusive jurisdiction of the trial of criminally negligent homicide and of felonies.

(2) A justice court, for offenses committed within the county, and a city court, for offenses committed within the jurisdictional authority of the city, have concurrent jurisdiction of all state traffic offenses, except that they do not have jurisdiction of the trial of the following:

(a) Any felony.

(b) Criminally negligent homicide.

[(c) Violations of provisions of law for which a penalty is provided in subsection (12) of ORS 483.991.]

[(3) Paragraph (c) of subsection (2) of this section does not deprive a city court of jurisdiction of an offense against an ordinance conforming to provisions of law for which a penalty is provided in subsection (12) of ORS 483.991.]

(3) The city attorney shall have authority to prosecute in the name of the state for a state traffic offense committed within the jurisdictional authority of the city as provided in subsection (2) of this section, and in any appeal therefrom.

COMMENTARY

A. Summary

This section amends ORS 484.030 to authorize a city attorney to prosecute in the name of the state

for a state traffic offense committed in the city's jurisdictional authority. Paragraph (c) of subsection (2) and subsection (3) would be deleted. These references are to "hit and run" crimes in which injury or death of a person results, which crime is proposed to be graded as a Class C felony.

B. Derivation

This amendment is based on previous legislative proposals, in particular House Bill 1612 introduced in the 1967 legislative session.

C. Relationship to Existing Law

Under the existing provisions of ORS 484.030 and 8.660, a city attorney cannot prosecute for a violation of state traffic law in city court. The result has been to encourage cities to pass ordinances duplicating many of the provisions of ORS ch 483, but with, of course, a penalty structure within the maximum limits of a city's jurisdiction.