

COMMITTEE ON JUDICIARY
Subcommittee on Revision

January 8, 1974

Minutes

Members Present: Senator Elizabeth W. Browne, Chairman
Representative Stan Bunn
Representative Robert P. Marx

Delayed: Senator Wallace P. Carson, Jr.

Staff Present: Mrs. Marion B. Embick
Mr. Donald L. Paillette

Also Present: Mr. L. E. George, Engineer, Highway Division
Mr. Jim Dutoit, Automobile Club of Oregon
Capt. John Williams, Oregon State Police, Traffic
Division
Ms. Vinita Howard, Motor Vehicles Division
Mr. Ralph Sipprell, Dept. of Transportation
Hon. Wayne M. Thompson, Municipal Court Judge

Agenda: Speed Restrictions, Preliminary Draft No. 1
Traffic Signs and Signals, Preliminary Draft No. 1
Special Order of Business: State Police radar
demonstration for members conducted by Capt.
John Williams

Senator Elizabeth W. Browne, Chairman, called the meeting to order at 10:15 a.m. in Room 14, State Capitol.

Approval of Minutes of Meeting of December 20, 1973.

Rep. Marx moved the adoption of the minutes of December 20, 1973. There being no objections the minutes were approved as submitted.

Speed Restrictions, Preliminary Draft No. 1

Mrs. Embick called attention to the amendments adopted by the members at the meeting of December 20 and which are attached to these minutes as Appendix A. Section 1, she pointed out, was not amended at that time and was previously adopted by the subcommittee. Paragraph (c), subsection (1) of section 2 was amended to insert "unless a greater or lesser speed is designated in accordance with ORS 483.106" Subsection (2) of section 3 which had established a maximum speed was deleted by the subcommittee and the section had been adopted as amended.

Sections 4 and 5 are concerned with setting of speed limits by the Department of Transportation and the State Speed Control Board and Mrs. Embick recalled that the subcommittee had deferred final drafting on these two sections until it had received a report from Mr. George.

Mrs. Embick next referred to section 6 and stated that the action of the subcommittee at its December 20 meeting was to remove sections relating to speed traps and restate subsection (2) in terms of arresting on probable cause, which was accomplished in paragraph (b). Mr. Paillette reported that the substance of the section had previously been approved. See page 8 of these minutes for further action on the section.

Sections 7 and 8 represent the amendments proposed by the subcommittee with respect to impeding traffic and minimum speed regulation. Section 7 sets out the offense of impeding traffic and contains no reference to any minimum speed. Mrs. Embick reported the section would need to be formally adopted but it had been drafted along the lines of the subcommittee's discussion.

The Chairman asked if there was a definition for "emergency" as stated in subsection (2) of section 8 and Mrs. Embick responded that there was not a definition as it was thought this would be adequate, without definition.

Representative Bunn moved the adoption of section 7 as amended.

Voting for the motion: Bunn, Marx, Chairman Browne. Excused: Carson.
Motion carried.

Section 8, Mrs. Embick explained, is a restatement of section 6 of Preliminary Draft No. 1 with respect to the minimum speed regulation and is taken from the UVC and drafted to limit it to state highways only. The jurisdiction over setting of speeds would belong to the Department of Transportation.

Representative Marx asked if the intent of the section would be to prohibit citations being issued unless the highways were posted and Mrs. Embick answered in the affirmative. She called attention to the last phrase of subsection (2) "when posted upon appropriate fixed or variable signs."

Representative Marx next asked if other states had adopted a basic rule for driving under the posted speed or if they would normally be cited for impeding traffic. It was Mrs. Embick's understanding that Oregon would be the only state which would have two separate violations, one for minimum speed and the other for impeding traffic. Captain Williams mentioned that he had corresponded with California and Washington on this matter and as yet has not received a reply from either state.

Representative Marx moved the adoption of section 8.

Voting aye: Marx, Chairman Browne; voting no: Bunn; Excused: Carson.
Motion failed.

Representative Bunn stated that he could not support the section but that having voted on the prevailing side, he would ask for reconsideration of the vote at such time as Senator Carson arrives at the meeting. See page 15 of these minutes for further action on section 8.

Mrs. Embick noted that section 9 had been amended to remove all reference to highway postal and motor busses and now refers to trucks, school and worker transport busses. Subsection (5) had been amended to delete the words "or hearses" and the section had been adopted by the subcommittee with these amendments.

Section 10 was amended to delete subsections (5), (6) and (7) which created an offense for a manufacturer, dealer, distributor or other person to publish the results of a speed race if the results show a violation of the speed laws. Subsection (7) relating to rallies was deleted with the proviso that the commentary show the intent of the subcommittee. The section was previously adopted, Mrs. Embick reported.

Section 11. Mrs. Embick explained that by action of the subcommittee the words "engineering and traffic" were deleted from subsection (2) in order that the Department of Transportation would make their determination on the basis of any type of investigation. The section had previously been adopted.

Mrs. Embick further stated that with the exception of setting of speeds by the State Speed Control Board and the Department of Transportation the draft would be completed. Mr. Paillette suggested the draft remain in its present state and at the time the two sections are revised the Article could be adopted.

Mr. George referred to page 5 of the amendments and subsection (2) of section 9 which refers to pneumatic tires. He stated that the phrase "equipped with pneumatic tires" was unnecessary as to his knowledge there are not any solid tire vehicles operating on the roads.

Representative Bunn moved subsection (2) of section 9 be amended to delete "equipped with pneumatic tires" in line 2.

Voting for the motion: Bunn, Marx, Chairman Browne. Excused: Carson.
Motion carried.

Traffic Signs, Signals and Markings, Preliminary Draft No. 1

Section 1. Obedience to and required traffic control devices.
Mr. George referred to the word "authorized" in subsection (1), paragraphs (a) and (b). He expressed concern as to what is authorized and who does the authorizing. He next called attention to subsection (3) and the words "in position" which he said could have different connotations.

The Chairman referred to the emergency vehicle provision in paragraph (b) and advised of the policy decision made by the subcommittee to authorize the Department of Motor Vehicles to determine what would be an authorized emergency vehicle.

Mrs. Embick explained that section 9 of Preliminary Draft No. 3, General Provisions, defines an emergency vehicle according to its equipment and lights and which states that it is used by specific agencies as well as other vehicles authorized in writing by the Administrator of the Motor Vehicles Division. She stated that "authorized emergency vehicle" would therefore refer back to that definition.

In response to Chairman Browne's question as to "authorized flagman" in paragraph (a), Mrs. Embick stated this was not contained in the UVC but in the Traffic Code of Alaska. Mr. George stated that utility companies, for example, are required at times to flag traffic and yet they are not related to any arm of the government but are private industry. He said there was a question in that area as well as to the official, but not authorized, flagman who is employed by city, county or state government.

Captain Williams expressed dissatisfaction to the use of the words "fireman or authorized flagman" and stated that to his knowledge Alaska is the only state which has this provision. If this authorization is given promiscuously, he said, the bill would be flexible enough that the control direction by an experienced person would be missing and for this reason the other states restrict this to police officers. Captain Williams stated the position taken by the State Police would be to restrict this authority to the officers and which is so stated in ORS 483.128. Their primary concern is the type of individual who would be directing the traffic.

Representative Marx asked the consequences if the driver ignores the flagman at the construction site and Captain Williams replied that it is normally treated as reckless driving. As the section addresses itself to obeying the required traffic control device, which he believed to be of a serious nature, he said the police would wish to be present in such instances.

Representative Bunn observed that a police officer could not be present at all construction sites or telephone or gas line repairs and wondered if as a practical matter the police provide a flagman

when the operations reach a specific point, or if he is provided by the utility company and might therefore create a problem. Captain Williams stated he was unaware of any problem being created under the present situation but that he was concerned that by expanding the section, it could happen.

Mr. George referred to the maintenance crews on the highways and city streets where slow or stop signs must be used to divert traffic. The need is there to stop the traffic, he said, even though the flagman is not a police officer, and he asked Captain Williams' views for allowing this situation to occur. Captain Williams commented that he would believe that in some situations where there is a need for directing traffic, some authority should be directed to those individuals. He thought that the problem in the past was in how to control this situation.

Mr. Dutoit agreed with Captain Williams' statement that the police arrive at the scene where a high volume of traffic would occur and Salem police are geared for this type of need. By having untrained utility people standing and directing traffic, he said the problem would be greater. Mr. George stated, however, that occasions have occurred where the need arises to stop traffic immediately and there would be no time to wait for the officer to arrive.

Representative Bunn said his understanding of the section was that it was directed only to traffic control devices and would not apply to the construction sites where an individual would be stopping or directing traffic. On this basis, he said he would agree with Captain Williams' contention that it apply only to police officers.

Mrs. Embick called attention to page 3 of the draft and the UVC definition of official traffic control device:

"All signs, signals, markings and devices not inconsistent with this act placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic."

She believed that because of this definition, the signs as well as the traffic signal would be included.

Mr. Paillette was of the opinion the only time there could be a conflict with section 1 would be if there was a fixed stop sign or a red light and someone on a road crew would be waving the drivers through the stop sign with a slow sign. He believed it became an official traffic control device once it is held up by the individual.

Representative Bunn noted that the UVC definition of traffic control device could allow any person to place a sign out directing traffic, although section 1 would not allow this. Mrs. Embick stated that it is being considered to define traffic control device in verbatim conformity with the UVC definition but adding the additional phrase, "placed in accordance with the provisions of traffic

regulations or other laws of Oregon." She called attention to section 7 of the draft which prohibits the use of signs which appear to resemble official traffic control devices.

Representative Bunn posed the situation whereby a mobile home is being backed into a lot and an individual is out on the road stopping or slowing traffic in order to prevent accidents. He asked if the proposed addition to the definition would in any manner restrict this. Mrs. Embick replied that the intent of the draft was not to restrict it but that when considering section 7 it may be necessary to include an exception for emergency situations.

Representative Bunn moved section 1 be amended to delete ", fireman or authorized flagman" in paragraph (a) of subsection (1).

Captain Williams reported that his interpretation of the section would be that if the authorized flagman directs the traffic through the device there is no violation and the police could not interfere in such a situation. For this reason he would urge that it be restricted to the police officer.

Ms. Howard recalled another section in the UVC relating to the duties of the motorist to obey and change speeds in construction and maintenance areas and believed this could accommodate the situation which had been commented on earlier by Mr. George.

Captain Williams voiced objection to the insertion of "fireman" in the section as this would include all volunteer firemen as well.

Representative Marx wondered if any problem existed whether or not the words remained in the draft so long as there is authority for the Highway Commission in another section. Mr. George was uncertain if this authority existed and Mr. Paillette reported that it should not be placed in this section because designating specific authority for other persons to regulate the flow of traffic under certain conditions speaks to a separate issue.

Vote was taken on Representative Bunn's motion to delete ", fireman or authorized flagman" in paragraph (a) of subsection (1).

Voting for the motion: Bunn, Chairman Browne. Voting no: Marx. Excused: Carson. Motion failed. Further action was taken on this motion at a later point in the meeting. See page 9 of these minutes.

Mrs. Embick advised that subsections (2), (3) and (4) are not contained in existing law and are taken from the UVC. Subsection (1) is a restatement of ORS 483.128.

Subsection (2) will not only cover traffic lights without word legends and word legends for pedestrian direction, but will also take into account traffic signs which are in place.

The Chairman questioned the term "legible" in line 4 of the subsection and Mrs. Embick explained it would include the situation where there might be shrubbery obscuring the view. Mr. George stated his interpretation would be that a traffic signal, in order to be legible, would have to be visible. The Chairman thought the word could also mean that the flashing lights would have to state something. Representative Bunn wondered if the word would require that the signs must have writing on them although this would not be his interpretation of "legible," he said. Mrs. Embick was of the opinion that "official traffic control device" would cover signs with or without words, to which Mr. George concurred.

Subsection (3) states that it is presumed that the official traffic control device, when placed in position to conform to the requirements of law, have been placed by an official act of lawful authority. In answer to Representative Bunn's question, Mrs. Embick thought this subsection was needed as it could be a rule of evidence in trying a person on a charge of failing to obey an official traffic control device. She called attention to Schoenborn v. Broderick, et al, 202 Or 634, 277 P2d 787 (1954), in which the presumption of legality of this subsection was held to exist in favor of traffic control devices which had been placed in accordance with traffic regulations where it appeared there had been supervision of public authorities in the placement of the signs. Nichols v. Union Pacific R.R. Co., 196 Or 488, 250 P2d 379 (1952), states that if there is no evidence showing installation by or under supervision of public authority, there is no presumption of legality in favor of the traffic signs and therefore Oregon law means that it must be shown that a sign was not placed with any supervision of public authority in order to remove the presumption, she said.

Mr. George inquired as to the rationale for placement of the words "in position" in subsection (3). The sentence continues to state that they are placed in conformance to the requirements of the traffic regulations or other laws of Oregon. He called attention to the National Uniform Sign Manual adopted by the Highway Commission and said these regulations and laws stipulate the position of different types of signs and therefore he believed the language redundant.

Representative Bunn proposed using the term "approximate conformity" in lieu of "position approximately conforming."

Subsection (4), Mrs. Embick advised, is taken from UVC language and would mean that not only is the device placed in accordance with the rules guiding placement but must also comply with the size, measurements, reading, etc. for traffic control devices. In response to Representative Bunn's inquiry, Mrs. Embick stated that the subsection

was necessary because even though it is established in existing law that the placement of signs must be an official act, the presumption is there so that persons can more easily understand the Code, rather than depending on decisional law. If it could be proven that the sign was not placed by public authority, there could be a cause of action against whomever had displayed the sign unlawfully under section 7, which prohibits the unlawful display of signs.

Mr. George thought that the subsection in effect states that the official traffic control device shall be presumed to comply with the standards set by the Highway Commission.

Representative Marx moved subsection (3) of section 1 be amended to delete "position approximately conforming" in line 3 and insert "approximate conformity".

Voting for the motion: Bunn, Marx, Chairman Browne. Excused: Carson.
Motion carried.

Speed Restrictions, section 6 of subcommittee amendments.

Judge Thompson called attention to section 6 of the proposed amendments and noted that an ambiguity appears in the last sentence of subsection (1) with respect to how many charges can be made in the same citation when one is a charge relating to violation of the speed limit. He was of the opinion this ambiguity could be alleviated by striking the word "also" which appears twice in the sentence. Judge Thompson pointed out that the word could refer back to the earlier sentence which relates solely to a charge of violation of the basic rule and seems to infer that two offenses could be charged in one complaint.

Representative Bunn moved the deletion of "also" in lines 6 and 8 of the subcommittee amendments to Speed Restrictions, Preliminary Draft No. 1.

Voting for the motion: Bunn, Marx, Chairman Browne. Excused: Carson.

Rules of the subcommittee

Discussion was held by the members as to the rules to be followed with respect to whether a majority vote of the quorum present would constitute a passing vote. Mr. Paillette noted that the committee rules specifically refer to Mason's and with respect to quorums, a majority of the members present would constitute a quorum and which would be sufficient to take action.

The Chairman stated that when all members of the subcommittee are present, action would be taken on the procedures for voting and the decision made as to how many members present would represent a quorum. At that time she indicated that all motions which fail at today's meeting would then be reconsidered. See page 14 of these minutes for action taken by the subcommittee on this subject.

Traffic Signs, Signals and Markings, Preliminary Draft No. 1

The subcommittee again turned its attention to section 1 of the draft.

Representative Marx moved the adoption of section 1 as amended.

Representative Bunn explained that he would cast a negative vote in order that his earlier motion to delete ", fireman or authorized flagman" in paragraph (a) of subsection (1) might be reconsidered when all members of the subcommittee are present.

Representative Marx stated that if another section were to be written granting authority to the flagman he would be willing to change his previous negative vote and accept the deletion. Mrs. Embick indicated that before the next meeting of the subcommittee she will investigate what the appropriate provision would be for this authority and place it before the subcommittee at that time.

Ms. Howard referred to her earlier comment relating to the UVC provisions for construction sites and thought this to be an appropriate place to inject this language. Mr. Paillette stated it was important to remember that section 1, as stated, does not give authority to anyone to go out and direct traffic, as all it speaks to is an exception to the commission of the offense. Mr. George advised that he was in agreement to strike the words from the paragraph.

Representative Bunn moved that paragraph (a), subsection (1) of section 1 be amended to delete ", fireman or authorized flagman".

Voting for the motion: Bunn, Marx, Chairman Browne. Excused: Carson.
Motion carried.

Vote was next taken on Representative Marx's earlier motion to adopt section 1 as amended.

Voting for the motion: Bunn, Marx, Chairman Browne. Excused: Carson.
Motion carried.

Section 2. Traffic control signals. Mrs. Embick explained the section is a restatement of ORS 483.130 and would delete the use of the words "Go," "Caution" and "Stop" which have not been used on the signals for several years and which were deleted from the UVC in 1952. The provisions of ORS 483.130, she said, are largely similar to those in the 1934 edition of the UVC. Mrs. Embick called attention to subsection (4) and stated that since its drafting she had become aware that in some intersections there is no crosswalk and consequently, if there is no crosswalk or line designated by the proper traffic authority as stated in lines 2 and 3 of that subsection, under existing law and under the draft there would be no line delineated at which a

driver must stop. Mrs. Embick proposed that subsection (4) incorporate the language of UVC s 11-202 (see page 21 of the draft) which states in paragraph (1) of section (c) that the vehicular traffic facing a steady red signal alone shall stop "at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection." Lines 2 and 3 of subsection (4) would then be deleted.

Mr. George asked if a definition of "standing" is contained in existing law and Mrs. Embick replied in the negative.

Representative Bunn moved the above proposal of Mrs. Embick's to incorporate the language from the UVC in line 2 of subsection (4) and delete lines 2 and 3 of the subsection.

Voting for the motion: Bunn, Marx, Chairman Browne. Excused: Carson. Motion carried.

The subcommittee recessed for lunch at 12:15 p.m. reconvening at 1:30 in front of the Capitol steps for the radar demonstration presented by Captain Williams. The afternoon meeting began at 2:30 p.m.

Referring to the amendment to subsection (4) adopted by the subcommittee at the morning's meeting, Mrs. Embick reported the necessity of making parallel changes in subsection (3).

Representative Marx moved that the language adopted in subsection (4) be incorporated in subsection (3) of section 2.

Voting for the motion: Bunn, Marx, Chairman Browne. Excused: Carson. Motion carried.

Mr. George referred to his earlier question with respect to "standing," which is retained in the second sentence of subsection (4) and wondered if the word "stop" might be more appropriate. Mrs. Embick explained there was no definition of standing and that she recognized the problem inasmuch as in subsequent Articles there could be provisions which the committee may wish to enact concerning both parking and standing. Mr. Paillette reported that s 1-168 of the UVC contains the definition as follows: "the halting of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers." Section 1-170 of the UVC defines "stop" as "complete cessation from movement" and he believed the word "standing" to be more appropriate. Mr. Paillette explained that if standing, the vehicle could be slightly moving but would still be standing. He advised that the revised commentary should note that this is the intent of the word. Mr. Paillette also pointed out that this kind of definition should ultimately go into a general article on definitions which would apply throughout the Code.

Mr. George expressed concern over the use of the word "lights" throughout the section. From an engineering standpoint he said this would be a general term and could mean several things, such as the entire signal head standing which hangs from the spanwire and that many people use the term for the entire unit. To him it would mean the object which is screwed into the socket of the traffic signal. Mr. George advised that his personal preference would be the word "indication" which is used in the Uniform Traffic Control Device manual and which has been adopted by the Department of Transportation as the State Sign Manual. This terminology, he said, is contained in all the state engineering and technical literature.

Mrs. Embick reported the draft could be drawn in this respect and although she was of the opinion the word "light" was ambiguous and "indication" was not, it could be that the latter was not totally understandable to the general public to which Representative Bunn concurred and said he did not believe the word "light" could create any legal problems. Mr. Paillette expressed the view that wherever possible the draft should contain terminology used by the public and was in favor of retaining this word even though the UVC uses the term "indication." He advised that the Oregon Driver's Manual uses the word "light." Mrs. Embick pointed out that further confusion has occurred by the use of "light" and "lens" interchangeably.

Mr. George expressed favor to subsection (5) and stated that it takes into account school crossing signals and existing law has no comparable provision.

Mrs. Embick called attention to subsection (3) and explained that it is different from the UVC in that under existing law, if the driver cannot stop he can drive cautiously through the yellow light whereas UVC language warns the driver that the related right-of-way is being terminated. Mr. George contended that existing law (ORS 483.130 (2)) in effect provides a cushion for the operator to use his judgment in that he can proceed through the light if he does not believe he can make a safe stop and he encouraged retention of this provision. Mrs. Embick stated that the wording has been rephrased so that the driver is responsible rather than stating the "vehicle may be driven."

Representative Marx moved the adoption of section 2 as amended.

Voting for the motion: Bunn, Marx, Chairman Browne. Excused: Carson.
Motion carried.

Section 3. Vehicle turns at intersections with red traffic control light. Mrs. Embick explained the section incorporates the provisions contained in ORS 483.132. It sets out the rules for turning at an intersection when the signal is "Go" or "Stop" and places responsibility on the driver intending to turn. Subsection (2) is new to Oregon law and provides that the driver making the turn shall yield the right-of-way to pedestrians or other traffic lawfully using the intersection.

Mr. George spoke to subsection (2) and the phrase "to other traffic lawfully using the intersection." His interpretation of this phrase is that the only vehicles which would have to be considered by the driver when making a turn would be those actually within the intersection and not those on the immediate approaches.

Senator Carson arrived at the meeting at this point.

Ms. Howard suggested that the phrase be continued to state "to other traffic within the intersection or approaching so close as to constitute an immediate hazard." Mr. Paillette pointed out that this proposed language is consistent with UVC language on right-of-way.

Senator Carson moved subsection (2) of section 3 be amended to delete "lawfully using the intersection" in lines 3 and 4 and insert "within the intersection or approaching so close as to constitute an immediate hazard".

Motion carried unanimously.

Senator Carson moved the adoption of section 3 as amended.

Voting for the motion: Carson, Marx, Chairman Browne. Not voting: Bunn.
Motion carried.

Section 4. Pedestrian control signals. Mrs. Embick explained the section is a restatement of ORS 483.134 and refers to the words "Walk," "Wait" and "Don't Walk." She indicated the UVC provisions do not use the word "Wait" in its pedestrian control signals. There is no substantive change in the section.

Senator Carson observed that some pedestrians, because of injury, advanced age, or the like, start when the signal indicates "Walk" but proceed at a slow pace. It would appear to him that once they do start on the "Walk" signal there is nothing in the draft which would place them back into their own personal liability situation.

Mr. George pointed out that the addition of the words "with dispatch" could alleviate this situation. He spoke to the language "side-walk or safety island" in paragraph (b) of subsection (1) and stated that there were many pedestrian signals in the rural areas which do not have sidewalks or safety islands, but gravel or paved shoulders. Mrs. Embick advised that the definition of sidewalk does not include anything related to the improvement of the shoulder (ORS 483.024) and consequently if it is a rural area and the sidewalk is not improved, it still exists.

Representative Marx moved paragraph (b) of subsection (1) be amended to delete ", but" in line 2 and insert a period.

Motion carried unanimously.

Representative Bunn moved paragraph (b) of subsection (1) be amended to insert "with dispatch" following "proceed" in line 3.

Motion carried unanimously.

Representative Bunn moved the adoption of section 4 as amended.

Motion carried unanimously.

Section 5. Flashing signals. Mrs. Embick reported the section amends ORS 483.136 and suggested that the stopping point in paragraph (a) of subsection (1) be restated in the same terms as section 2 inasmuch as where there is no crosswalk at an intersection whereby a line can be drawn, it appears this line cannot be defined. Paragraph (a) directs the driver to stop on a flashing red light and (b) directs him to proceed with caution.

Subsection (2) is new language. Mrs. Embick thought it appropriate to have a separate provision for the grade crossing and which is the UVC procedure, inasmuch as the railroad grade crossing flashing signal will probably not be covered under the definition of an official traffic device.

Senator Carson wondered if there was a disadvantage to combining provisions relating to red and yellow flashing signals in one section and expressed favor to separating them into two sections.

Representative Marx suggested that for better clarity the language be changed to delete references to a red or yellow "lens being illuminated by rapid intermittent flashes" and substituted with a phrase such as "when approaching a flashing red light a driver shall stop"

Mr. George commented that to be consistent the draft should read "red signal light" which is the language used in section 2. Senator Carson suggested the language be used in an active rather than passive tense and state "A driver shall, when approaching a red signal light" and which could then continue with the language in paragraph (a).

Mr. Paillette reported that most of existing law is written in the passive language and directed at cars rather than people, but advised that the staff is attempting to write the drafts in the active tense.

Senator Carson expressed the view that although he believed it necessary to retain the flashing yellow light provision, it should be required that they are not included as part of a three-phase system where the flashing automatically becomes a caution light. Mr. George reported that the Highway Commission is attempting to refrain from

the usage of the flashing yellow on a three-way head but he advised that in some instances it becomes a useful procedure such as in traffic signals which are interconnected to railroad crossings and adjacent to an intersection. After further discussion, Mr. Paillette suggested the section be redrafted with separate provisions for the flashing red and yellow signals.

In answer to a question by Senator Carson, Mrs. Embick indicated that she would wish further conversation with Mr. George to determine why the UVC sees fit to have the railroad grade crossings considered totally separate before any decision is made as to whether subsection (2) will be placed in the next draft. Senator Carson noted that there was a distinction between a flashing red signal and a railroad signal and even though the railroad signals incorporate a flashing red light, the duties under one are not the same as under the other.

It was the consensus of the subcommittee that ORS 483.136 be repealed and the staff was directed to redraft the section.

Discussion was next held by the members as to quorum rules to be adopted by the subcommittee members.

Senator Carson moved that the subcommittee adopt the rule that a quorum would constitute three subcommittee members and that the majority of the quorum could pass a measure.

Motion carried unanimously.

Section 6. Lane direction control signals. The provision is new and based on the UVC and would allow the placement of directional control signals over individual lanes of a street or highway. There is authority in the general provisions for the placing of the lane direction sign, Mrs. Embick advised, but there had not been a provision whereby a person could be charged for such a violation.

In response to Senator Carson's question, Mr. George explained that there are some instances where it is necessary to relieve the traffic from the intersection and the device is used in those instances. He recalled the situation on State and A Streets in Lake Oswego where the device is used to keep one lane moving at all times, and said that approximately 1,500 to 2,000 cars an hour can move uninterrupted through such a lane whereas it drops to approximately 900 cars an hour on a traffic signal. If the separating island is maintained properly, Mr. George reported it is a safe operation.

The Chairman inquired if the painted arrows designating turns were incorporated in the draft and Mrs. Embick advised the draft concerns itself with signals and the provision with respect to markings would be contained in a separate Article.

Mr. George noted that to be consistent with the draft the terms "green signal light" and "red signal light" should be used.

Senator Carson moved subsection (1) of section 6 be amended to insert "light" in lines 4 and 5 following "signal".

Motion carried unanimously.

Senator Carson moved the adoption of section 6 as amended.

Motion carried unanimously.

Section 7. Unlawful display of signs, signals or markings.
Representative Bunn called attention to paragraph (b) of subsection (1) and alluded to an earlier discussion with respect to utility company personnel or mobile home movers using a device to direct the movement of traffic. The alternative would be to have no direction at all. He asked if they would be violating the section, as written. Mrs. Embick commented that s 11-205 of the UVC (page 23 of the draft) which is similar to the section contains the phrase "unauthorized sign, signal, marking or device" in line 2 of subsection (a). As this raises the question of who authorizes the signs, etc., it was decided to omit the word "unauthorized" in the draft. Senator Carson presumed that subsection (2) of the section would be directed to the public utility companies as it relates to organizations but would not concern itself with the mobile home situation as posed by Representative Bunn.

Representative Bunn next inquired if this authorization is given to the utility companies by statute and Mr. George advised that the cities have their ordinances but he did not believe there was any such authority for the rural areas. Ms. Howard referred to this situation and stated there are rules and regulations issued by the Highway Division instructing the pilot car operators in the direction of traffic but Mr. Sipprell pointed out that these rules did not go into such detail.

Speed Restrictions; Preliminary Draft No. 1, section 8 of amendments.

The subcommittee next turned its attention to the amendments adopted with respect to section 8, minimum speed regulation.

Senator Carson spoke to the exception placed in subsection (2) of the amendments and was of the opinion it should be deleted in that subsection and restated in subsection (1) which in effect would delete the exception from the administration section.

Senator Carson moved to amend section 8 of the subcommittee amendments to Speed Restrictions, P.D. No. 1 as follows:

In subsection (1), line 5, following "minimum posted speed" insert "except when necessary for safe operation or in compliance with law or because of emergency".

In subsection (2), line 5, insert a period following "vehicle" and delete ", except when" and delete all of lines 6, 7 and 8.

Voting for the motion: Carson, Marx, Chairman Browne. Not voting: Bunn.
Motion carried.

Senator Carson moved the adoption of section 8 as amended, with the proviso that upon Representative Bunn's return he be allowed to vote upon the motion.

Vote was not taken on the motion and Senator Carson recommended that the section be deleted from the draft and added to the category of those items on which the subcommittee has not agreed upon. The section could then be brought to the attention of the full committee when it considers the draft.

Traffic Signs, Signals and Markings

The subcommittee directed its attention again to section 7 which restates the provisions of ORS 483.138, which would be repealed. The term "railroad sign or signal" in paragraph (a) is again stated separately because of the UVC language.

Mrs. Embick pointed out that it had been considered inserting the phrase "without lawful authority" in subsection (1) and which would be similar to UVC language where the term "unauthorized" is used. In answer to the Chairman's question as to where the utility companies would obtain the "lawful authority" Mrs. Embick responded she would confer with Mr. George in drafting a section which would cover these situations.

Mr. Paillette alluded to an earlier discussion with respect to the flagman situation in section 1 and stated the new section could cover all such areas and give specific authority to the Department of Transportation or some other appropriate agency. The agency could authorize this placement of signs to the construction, utility and other companies requiring such authorization.

Mrs. Embick advised that existing law contains no emergency situations whereby signs can be placed. Ms. Howard inquired about circumstances where an accident has occurred and the drivers or passersby attempt to move the traffic. She said there is no authority under the present Code for this and she was not certain as to the need for it. The school patrols hold back the children until there is an appropriate break in traffic although in this situation she believed there was an administrative procedure to be followed by the schools and hinged on existing law.

The Chairman called attention to the emergency problem and stated that in some instances the directions given by volunteers could create even greater chaos. Mrs. Embick commented that the section does not deal with directions but concerns itself with using an official traffic control device to direct traffic and she indicated a significant difference between this and the emergency situation where most drivers are not equipped with a device of any sort.

Mrs. Embick reported that ORS 483.138 uses the term "unofficial" as the term for the sign or device. Mr. Paillette noted that s 11-205 of the UVC as well as existing law seems almost implicit that it speaks to a sign or device which has been erected, rather than someone holding a sign or marker, and that the words "places, maintains or displays" in subsection (1) would seem to denote a permanent fixture. Ms. Howard agreed with this assessment and spoke of instances where signs or flashing lights which resemble stop lights have been used as an advertising device and have been placed in close proximity to the road, and she thought the draft speaks to this, rather than to emergencies.

The Chairman stated that by limiting the section to permanent fixtures, there would still be the question of the flagman and utility personnel activities.

The Chairman called attention to the word "marking" as contained in subsection (3) and Mrs. Embick explained this would cover what would be used by a person that purported to resemble an official traffic control device and follows the UVC wording.

Mrs. Embick stated that existing law contains the words "signs, signal or device" and UVC language refers to "sign, signal, marking or device" and recommended the use of the latter in subsections (1) and (3).

Chairman Browne moved subsection (1) be amended to insert ", marking" following "signal" in line 3 and that subsection (3) be amended to delete "or" following "signal" in line 1 and insert a comma, and in the same line following "marking" insert "or device".

Voting for the motion: Bunn, Marx, Chairman Browne. Not voting: Carson.
Motion carried.

Representative Marx moved the adoption of section 7 as amended.

Representative Bunn asked if the section, as amended, would speak only to permanent fixtures and that the problem relating to flagmen would be considered in another section and the Chairman answered in the affirmative. She stated that the commentary will note that the section concerns itself only with fixed objects. Mr. Paillette pointed out that the commentary to section 7, as well as the commentary to the new section, will contain a cross-reference showing one is exclusive to the other.

Vote was taken on Representative Marx's motion to adopt section 7 as amended.

Motion carried unanimously.

Section 8. Unlawful interference with official traffic control device or railroad sign or signal. Mrs. Embick reported ORS 483.140 contains no statement as to whether or not any intent in defacing or mutilating a device is involved in the violation and has been drawn to state it is a violation if done without lawful authority or with criminal negligence.

In response to Senator Carson's question as to whether the statute would be violated if the person acted with greater culpability, Mr. Paillette reported that ORS 161.115 (3) states:

"If the definition of an offense prescribes criminal negligence as the culpable mental state, it is also established if a person acts intentionally, knowingly or recklessly "

A traffic infraction, he pointed out, if that term is adopted, will be considered an offense and a violation already is.

Captain Williams expressed concern over the use of the words "criminal negligence" and rather than using this term he desired that it be replaced by other language. Criminal negligence, he said, has a different connotation to people who believe it to be over and above such things as defacing a sign.

Senator Carson proposed that "criminal negligence" be stricken from the section and that it rely on ORS 161.115 (2) which states:

"Except as provided in ORS 161.105, if a statute defining an offense does not prescribe a culpable mental state, culpability is nonetheless required and is established only if a person acts intentionally, knowingly, recklessly or with criminal negligence."

Mr. Paillette pointed out the exception in ORS 161.105 states that if the offense is a violation no culpability is required unless the statute specifically states it. If this were to be graded as a misdemeanor then culpability is required, he said, because it is stated that culpability is required unless it is a violation or unless the statute clearly indicates the legislature intended to dispense with any culpable mental state. Mr. Paillette was of the opinion some kind of minimum culpability should be required for this offense and minimum culpability would be criminal negligence.

Captain Williams observed that as judges become more familiar with the law, they will decide the person had acted with criminal negligence and that perhaps his fears are unfounded.

Senator Carson withdrew his objections to the section and moved the adoption of section 8.

Voting for the motion: Carson, Marx, Chairman Browne. Not voting: Bunn.

The next meeting of the subcommittee was scheduled for January 23 at 9:30 a.m.

The meeting was adjourned at 5 p.m.

Respectfully submitted,

Norma Schnider, Clerk
Subcommittee on Revision

~~January 8, 1974~~

Dec 20, 1973

Appendix A
Committee on Judiciary
Subcommittee on Revision
January 8, 1974

COMMITTEE ON JUDICIARY

Subcommittee Amendments to

Speed Restrictions
Preliminary Draft No. 1

Section 1. (Basic speed rule.) (1) A person commits the offense of violating the basic speed rule if he drives a vehicle upon a highway at a speed greater than is reasonable and prudent, having due regard to the traffic, surface and width of the highway, the hazard at intersections and any other conditions then existing.

(2) Violating the basic speed rule is a _____.

Section 2. (Maximum speeds.) (1) Except where a special hazard exists that requires a lower speed for compliance with section 1 of this Article, the speed limits designated under this section or ORS 483.106 or 483.108 shall be maximum lawful speeds. The speeds designated in this section are:

(a) Twenty miles per hour:

(A) When passing school grounds when children are present, or a crosswalk when children are present, if notice of the grounds or crosswalk is indicated plainly by signs or signals conforming to ORS 483.044.

(B) When approaching a grade crossing or a railway, interurban railway or street railway where the driver's view of the crossing or of any traffic on the railway is obstructed.

(C) In any business district.

(b) Twenty-five miles per hour:

(A) In any residence district.

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(B) In public parks, unless a different speed is designated by state or local authorities, as authorized by law, and duly posted.

(c) Fifty-five miles per hour in other locations unless a greater or lesser speed is designated in accordance with ORS 483.106 or 483.108 which shall be effective when appropriate signs giving notice thereof are erected upon the highway.

(2) A person who drives a vehicle at a speed greater than any of the speed limits specified under subsection (1) of this section commits the offense of speeding.

(3) Speeding is a _____.

Section 3. (Speeding; affirmative defense.) It is an affirmative defense to the offense of speeding that, having due regard to the traffic, weather, highway and other conditions then existing, the speed at which the person was driving was reasonable and prudent.

Section 4. (Special speed limits set by Department of Transportation.) [See section 3 on page 9 of Preliminary Draft No. 1.]

Section 5. (State Speed Control Board; appointment, vacancy, compensation and expenses of certain member; board to set speed limits.) [See section 4 on page 12 of Preliminary Draft No. 1.]

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Section 6. (Designation of speed in complaint; use of radar; arrest without warrant in radar cases.) (1) In every charge of violation of the law as to speed, consisting of or including violating the basic speed rule or the offense of speeding, the complaint and the summons or notice to appear shall specify the speed at which the defendant is alleged to have driven, and the maximum speed designated for the district or location. If a charge also is made of violation of any other provision of this chapter, the complaint and the summons or notice to appear also shall specify such other offense alleged to have been committed.

(2) When the speed of a vehicle has been checked by radiomicro waves or other electrical device, the driver of the vehicle may be arrested without a warrant if the arresting officer is in uniform and has either:

(a) Observed the recording of the speed of the vehicle by the radiomicro waves or other electrical device; or

(b) Based upon a description of the vehicle or other information received from the officer who has observed the speed of the vehicle recorded, has probable cause to make the arrest.

Section 7. (Impeding traffic.) (1) A person commits the offense of impeding traffic if he drives a motor vehicle, or combination of motor vehicles, at such a slow speed as to impede or block the normal and reasonable movement of traffic except when he must proceed at a reduced speed for safe operation or in compliance with law or because of emergency.

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(2) Impeding traffic is a _____.

Section 8. (Minimum speed regulation.) (1) A person commits the offense of violating the minimum speed regulation if he drives a motor vehicle or combination of motor vehicles on a state highway which has a minimum speed designated and posted under subsection (2) of this section, at a speed less than the minimum posted speed.

(2) Whenever the Department of Transportation determines on the basis of an engineering and traffic investigation that slow speeds on any state highway or part of a highway impede or block the normal and reasonable movement of traffic, the department may designate a minimum speed limit below which no person shall drive a vehicle, except when necessary for safe operation or in compliance with law or because of emergency the limit shall be effective when posted upon appropriate fixed or variable signs.

(3) Violating the minimum speed regulation is a _____.

Section 9. (Maximum speeds for motor trucks, school and worker transport busses.) (1) As used in this section:

(a) "Interstate highway" means a highway that is part of the National System of Interstate and Defense Highways established pursuant to section 103 (d), Title 23, United States Code;

(b) "School bus" means a vehicle as defined in subsection (4) of ORS 485.010;

(c) "Worker transport bus" means a vehicle as defined in subsection (5) of ORS 485.010.

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(2) A person commits the offense of violating the maximum speed limit for motor trucks equipped with pneumatic tires if he drives a motor truck at a speed greater than:

(a) Sixty miles per hour or such lesser speed as has been designated on an interstate highway on which a speed greater than the speed designated by subsection (3) of ORS 483.104 has been designated under ORS 483.106 or 483.108; or

(b) Fifty miles per hour on any street, road or highway not an interstate highway.

(3) A person commits the offense of violating the maximum speed limit for school busses and worker transport busses if he drives a school bus or worker transport bus on any highway, street or roadway at a speed greater than 55 miles per hour.

(4) Violation of subsection (2) or (3) of this section is a

(5) This section does not apply to ambulances.

(6) Notwithstanding any other provision of this section, the motor vehicles referred to in this section are subject to the provisions of section 1 of this Article.

Section 10. (Speed races prohibited on public ways; publishing or advertising results.) (1) As used in this section, "drag race" means the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more vehicles over a common selected course, from the same point to the same point, for the purpose of

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comparing the relative speeds or power of acceleration of such vehicle or vehicles within a certain distance or time limit.

(2) As used in this section, "racing" means the use of one or more vehicles in an attempt to outgain, outdistance, or prevent another vehicle from passing, to arrive at a given destination ahead of another vehicle or vehicles, or to test the physical stamina or endurance of drivers over long distance driving routes.

(3) A person commits the offense of speed racing on a highway if he drives a vehicle in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration, or makes a speed record, or participates in any manner in any such race, competition, contest, test, or exhibition upon any road, street, or highway in this state.

(4) Speed racing on a highway is a _____.

Section 11. ORS 483.124 is amended to read:

483.124. (Maximum speed on ocean shore.) (1) [Notwithstanding any other provision of law by which the speed of motor vehicles using the public highways is fixed and determined, the maximum speed of any vehicle or conveyance on any part of the ocean shore is 25 miles per hour.] Subject to the provisions of law relating to emergency vehicles and ambulances and subject to the basic speed rule, a person commits the offense of violating the maximum speed limit on the ocean shore if he drives a vehicle or conveyance on any part of the ocean shore in

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this state at a speed greater than 25 miles per hour or at a lesser speed if designated and posted under subsection (2) of this section.

(2) Whenever the [commission] Department of Transportation determines upon the basis of an [engineering and traffic] investigation that the speed of 25 miles an hour is greater than is reasonable or safe under the conditions found to exist with respect to any part of the ocean shore, the [commission] department may establish a maximum speed of less than 25 miles per hour on any specified section of such shore, and that limit shall be effective when posted upon appropriate fixed or variable signs.

(3) Violation of the maximum speed limit on the ocean shore is

a _____.