

Tape 6, Side 2 1358 to end
Tape 7, Side 1 to end
Tape 7, Side 2 0 to 0402

COMMITTEE ON JUDICIARY

Subcommittee on Revision

January 29, 1974

Minutes

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

Staff Present: Mrs. Marion B. Embick, Research Counsel
Mr. Donald L. Paillette, Project Director

Also Present: Hon. Lee Johnson, Attorney General
Ms. Vinita Howard, Motor Vehicles Division
Mr. Jim Dutoit, Automobile Club of Oregon
Municipal Judge Scott McArthur
Mr. L. E. George, Engineer, Highway Division
Capt. John Williams, Oregon State Police, Traffic
Division
Mr. Ralph Sipprell, Department of Transportation
Mr. Al Williams, Traffic Engineer, City of Eugene
Mr. Doug Van Dyke, Traffic Engineer, City of Salem
Jesse Adams, Chief of Police, Lebanon
Major E. W. Tichenor, Oregon State Police, Retired
Hon. Albin W. Norblad, District Judge, Marion County
Mr. Don Bergstrom, Traffic Engineer, City of Portland

Agenda: Emergency Highway Energy Conservation Act;
Maximum Speed Limit of 55 mph.
Speed Restrictions; ORS 483.106 and 483.108
Driving on Right Side of Roadway; Preliminary
Draft No. 1

Senator Elizabeth W. Browne, Chairman, called the meeting to order
at 9:45 a.m. in Room 14, State Capitol.

Approval of Minutes of Meeting of January 8, 1974.

The minutes of the meeting of January 8, 1974 were adopted as
submitted.

Proposed Fuel Conservation Maximum Speed Limit

Attorney General Lee Johnson appeared before the committee with
respect to a draft written by his office relating to the fuel conserva-
tion speed regulation and which is attached to these minutes as
Appendix A. Mr. Johnson explained that the rationale of the bill is

based upon the Emergency Highway Energy Conservation Act, which speaks in terms of the maximum speed limit of 55 mph. If a speed limit is not in effect within 60 days after the federal act, adopted in January 1974, Oregon would lose all federal highway funding, he said, and the state has advised the Federal Highway Administration, pointing out that Oregon's designated speed has been lowered to 55 mph and that there has been general compliance with this rule. Mr. Johnson added that although Oregon had taken these steps in November of 1973 he was uncertain that they are enough to satisfy federal law, and that a maximum speed limit would have to be set.

In drafting the bill, Mr. Johnson stated that he attempted not to disturb existing law to any great degree inasmuch as he did not believe that the Special Session should consider the question of whether or not the basic rule should be repealed in its entirety. He noted that the draft uses the same administrative framework as has been used in the past with regard to setting designated speeds and gives the Oregon Transportation Commission the power, in addition to setting designated speeds, to set a maximum speed limit. This would override other statutes with respect to setting maximum speed limits for trucks and busses.

The draft proposes a separate offense for violation of the law which would amount to a maximum fine of \$100, with no provision being made for a jail sentence. Mr. Johnson advised that the basic rule would still be in effect and the driver could be cited under it for driving at an excessive speed as well as driving under the 55 mph limit where conditions were hazardous.

Mr. Johnson proposed to strike the last sentence in subsection (1) of section 2 and explained that it could be interpreted to read that another re-signing project would be necessary. The signs now state "Speed 55 mph" and with the present language contained in the draft it might be interpreted that it must be stated "Speed limit 55 mph."

Representative Marx asked if someone violated the 55 mph limit, could he be cited for violation of the basic rule and also for violating this provision and Mr. Johnson replied in the affirmative.

Senator Carson spoke to this same question and called attention to the second sentence in subsection (1) wherein it is stated that such designation of a maximum speed limit shall not affect the provisions of the basic rule and the set speed. He noted that the basic rule operates both above and below the maximum speed and said that if the maximum speed does not affect the basic rule he would wonder if, even though the driver could be cited for traveling 60 mph in a 55 mph zone, he could have a defense.

Mr. Johnson thought that subsection (3) could be redrafted to state "Any person who violates this section may also be prosecuted for a violation of ORS 483.102" He was of the opinion the

section could be interpreted to apply only to those cases which were above the maximum speed. He explained that the draft attempts to state that the basic rule is retained although Senator Carson observed that the basic rule is a defense to driving 60 in a 55 mph zone and if it is intended to cite someone for violating the 55 mph limit, he doubted that the public could be told that the basic rule still exists.

Senator Carson expressed the view that the maximum speed is alien to the basic rule. Mr. Johnson disagreed and said that if there is a maximum speed of 55 mph and a driver is going at a speed of 90 mph, for example, it would be appropriate to cite him under the basic rule.

Senator Carson posed a hypothetical situation whereby the driver was traveling 65 mph on a clear day and on the same highway which had been posted at 70 mph for several years. The driver is going 10 miles above the energy speed limit of 55 mph, and he pointed out that the driver could not be proved to have violated the basic rule under these circumstances, to which Mr. Johnson concurred. Senator Carson next stated that even though there is a 55 mph sign along with excellent weather conditions, if action is not taken on the basic rule, the driver could go up to 70 mph on the freeway because he could prove, by showing pictures of old signs, that the state had determined this to be a designated speed up until the energy crisis. Mr. Johnson noted that the only persons who would be cited on a basic rule violation would be going well over 70 mph and/or someone driving under 55 mph in hazardous conditions.

Senator Carson observed that the subcommittee had been endeavoring to work with the basic rule and it was not considered to change it below and that if it is posted at 55 mph and bad weather conditions prevailed, the driver could be guilty of the crime of speeding even though he is doing less than the posted speed. When considering the designated speed, he wondered if it would be a maximum speed where an affirmative defense would be allowed or if the basic rule would be retained.

Mr. Paillette pointed out that earlier drafts, as well as those prepared with respect to the proposed fuel conservation speed limit, contain language which states that "Except where a special hazard exists which requires compliance with the basic rule" and which clearly shows that the basic rule is applied under 55 mph where a special hazard exists.

Mr. Johnson reported that it must be stated that anyone going over 55 mph is guilty of an offense in order to comply with federal law. He urged caution be taken and that it not be stated that re-signing is necessary as he believed the present signing to be sufficient.

The Chairman spoke to the problem of double citations, both for violating the maximum speed and the basic rule. Mr. Johnson explained

this already can be done for a number of criminal offenses. A driver presently can be cited for violation of the basic rule and also for careless driving, he said.

Senator Carson asked if it was Mr. Johnson's recommendation to set a maximum speed for automobiles, which he did not believe Oregon has, except for trucks and busses, and Mr. Johnson said this would be his recommendation although he would believe it preferable to do it from the standpoint of the method attempted in the draft and give authority to the Speed Control Board to set it at the 55 mph limit. If the energy crisis ends, the Board could then lift the limit.

Representative Bunn asked if there would be any problem in stating that there was a 55 mph maximum and that it can be set by the Speed Control Board - above that there would be no basic rule and below that the basic rule would apply. Mr. Johnson could not understand the rationale for attempting to use this language and Representative Bunn stated that he shared the concern of Senator Carson that there is some question as to whether there is an affirmative defense in some cases and the concern of the Chairman with respect to double penalties for the same violation.

Mrs. Embick explained that having conversed with Mr. Barrie, counsel for the Highway Division, she had been advised that if the basic rule defense above 55 mph were kept, Oregon would still be meeting the requirements of the 55 mph maximum under this proposed bill. She also noted that if the defense were allowed, the person who was charged could raise a constitutional issue as to what really was the defense he had if he were charged under both.

Senator Carson was of the opinion the public would be misled if the maximum speed or the basic rule is spoken about at the same time, and in his view it should be referred to as a posted or indicated speed. He pointed out that it was not unlawful for him to drive 30 mph in a 25 mph zone under certain circumstances and this would not be a maximum but an indicated or posted speed. He was concerned that if the basic rule would be applicable to speeds greater than 55 mph, the 55 mph limit should not be talked about as being a maximum. Mr. Johnson interjected that the draft allows the Commission, by administrative rule, to set a 55 mph speed limit and gives a separate penalty. If the person were driving at 60 mph he would be guilty of the offense of driving above 55 mph and this offense has nothing to do with the basic rule. Mr. Johnson continued that the basic rule is being maintained for the driver going under the 55 mph limit.

Representative Bunn again asked what would be the rationale for retaining the basic rule above 55 mph if it will be of no benefit to the public. Mr. Johnson remarked that his personal view would be to eliminate the basic rule in its entirety but that he did not believe the committee would wish to involve itself with this issue during the Special Session.

Representative Bunn pointed out that legislation is being proposed to give the Commission authority to set a maximum speed limit in the event of a fuel shortage and that he was concerned that if Oregon has a maximum speed but then retains the basic rule above that maximum speed, the public is being deceived inasmuch as they would not be able to use it. Mr. Johnson stated that an answer to this problem would be to set the speed limit at 55 mph and repeal the basic rule. Representative Bunn concurred that this would clarify the matter for the general public.

Senator Carson mentioned that the subcommittee had at previous meetings discussed a proposed change which would make the posted speed the maximum speed and with the further provision of an affirmative defense. He asked Mr. Johnson's opinion as to allowing the basic rule to apply below the posted speed and allow the affirmative defense provision above the speed. He wondered if the Federal Highway Administration would accept this proposal and Mr. Johnson stated that there is no way of foreseeing how the Administration would act. As he read the federal statute, it talks in terms of a maximum speed and anything which gives a person a defense is not a maximum speed. Mr. Johnson believed that Congress intended to have this as an absolute maximum because of the conservation aspect and traffic safety would not be a consideration.

Senator Carson called attention to the term "imminent" in subsection (1) of section 2 and Mrs. Embick stated this was taken directly from H.R. 11372 which had been passed by Congress.

Mrs. Embick called attention to the draft submitted by the staff for the fuel conservation limit and which is attached to these minutes as Appendix B. Subsection (1) of section 4 relates to the affirmative defense provision and subsection (2) indicates that this defense is not available to a charge of exceeding the fuel conservation maximum speed limit. In this manner she believed the public could be made aware that there was a maximum and whether the basic rule applied. She thought this to be consistent with the federal standard of a maximum speed.

Mr. Johnson cautioned against guessing what the federal rule would be and urged that someone be given authority to state that anything over 55 mph is an offense as this is a possible interpretation which the federal government would take.

Mr. Paillette reported that the committee draft gives authority to the Department of Transportation to make the determination as does the draft proposed by Mr. Johnson. Mr. Johnson called attention to section 3 which contains the provision relating to signing and suggested this be deleted from the draft.

Mr. Paillette pointed out that subsection (1) of section 2 contains language which was intended to apply the basic rule to speeds under the maximum speed.

Senator Carson observed that the proposed committee draft is called an energy conservation measure and that traffic safety is not the issue. It has been made clear that during the energy crisis, 55 mph is going to be top speed or a lesser speed if the Speed Control Board sets it.

Representative Bunn wondered if a requirement should be placed in the draft for a public hearing before the Oregon Transportation Commission makes a decision. He stressed that the public should be able to give its input to the Commission. Mr. Johnson stated that the Transportation Commission, by a temporary rule which is in effect for 60 days, lowered the designated speed to 55 mph and they must go through the APA procedure to make it a permanent rule. He did not see the necessity for the public hearing as suggested by Representative Bunn. Representative Bunn commented that there was no way of foreseeing how long the law would remain in effect and was concerned that when a Governor or agency makes a decision, it be based on fact and not emotion. Although he did agree the Governor and the Transportation Commission had made the right decision when they lowered the designated speed to 55 mph, he was of the opinion they went about making it in the wrong way and that it is imperative that this decision be based on evidence. He did not believe this type of protection is built into either of the two proposed drafts.

Mr. Johnson explained that the temporary rule procedures do require that a finding must be made that there is a real necessity to put the rule into effect immediately and they must go through the regular APA procedure. Many times the public will not be served well if the government does not act promptly, and he did not think the Commission would push a rule through if there was going to be widespread opposition. Representative Bunn commented that there should be legislative protection so that this situation would not occur. Mr. Johnson said that this should not be done in this bill but changed in the APA and the issue presented squarely. He said he was adamantly opposed to having a whole set of different procedures for every commission in state government as this is not fair to the citizen either.

Representative Bunn recapitulated the situation in that the decision is being made as to whether the basic rule should be eliminated to a certain degree in order to obtain highway funds.

The Chairman stated that her understanding of the procedure which will be followed would be that those bills coming into the Special Session will be considered separately by the House Committee and Senate Committee and unless a member has some special interest he may wish to express, she could not see the advantage to pursuing the bills further.

Senator Carson asserted that it would be a mistake to set up a dual standard and he thought the committee should come out and state what it believed would be the best thing to do. He thought that it would be more appropriate for the Judiciary Committee, having spent three months considering the problem, to make a recommendation to which the Chairman concurred. Senator Carson recommended the committee

continue its work on its proposed fuel conservation maximum speed limit draft with appropriate language in section 3 to make it understood that a public hearing is required by the Speed Control Board.

The Chairman noted that for the Special Session, if any types of hearings by the Transportation Commission are required, administrative or otherwise, it would in effect repeal the 55 mph limit and then the procedure for having the hearings would be required before the limit went into effect again. Senator Carson explained that the 60 days allowed under the Federal Act would expire March 3 and it would seem to him that the hearings could be held to allow the public input and make the decision. He believed there was ample time to do this, and if not, a provision might be written to allow an extension to continue the temporary rules' time period which in actuality is 120 days. Mr. George reported that the 120 days would expire on March 15.

Senator Carson presented his reasons for retaining the draft proposed by the staff and said the 55 mph conservation provision cannot be placed into existing law and pretend that it has not, in effect, killed the basic speed rule. He believed it should be stated that for conservation reasons, this is what is being done.

Representative Marx spoke to section 3 and asked how the need to conserve fuel would be determined. He asked if the required hearings would establish whether there was a need to conserve the fuel or whether the public would accept setting the 55 mph limit. Senator Carson thought it to be the former although the Chairman did not believe it would be as there would be a much broader spectrum than merely gasoline and this would not be the body to make that determination.

Representative Bunn thought it could be a combination of both. He said that if there was public input there would undoubtedly be some segment who would have alternatives in addition to discussion of establishment of the needs and he thought that a problem would exist if this is an executive decision without adequate public input and there would not be this broad spectrum of possible alternatives.

Representative Marx asked what agency would be established in the Governor's emergency bill to examine inventories of fuel supplies and distribution patterns. Senator Carson thought it could be the Governor himself and that an energy council would advise but undoubtedly not review and consent.

The Chairman suggested that the advisory board would be determined at the Special session and proposed section 3 be amended to read that "Whenever the Department of Transportation is advised by _____ that there is a need "

Mr. Paillette stated that if the determination is to be made by the Department of Transportation he believed it unwise to use language

as to include findings on their part that there is a fuel shortage generally and that their finding should be limited to motor fuel.

In response to the Chairman's question, Mr. George replied that the only source of information with respect to how much fuel Oregon has is the record of the fiscal office of the Motor Vehicles Division which reports the sales each month by various companies in Oregon. Ms. Howard stated that the fuel tax law requires that the dealers report how much is sold and the taxes are collected on that basis. As to future projections, about all they can do is look to past sales, she said.

Mr. Sipprell thought it appropriate to insert language in section 3 to state "Whenever required to do so by federal statute, the Department of Transportation is authorized to designate a maximum speed." Representative Bunn thought that flexibility was needed for the state itself to move if the federal government did not and disagreed with the above proposal and Senator Carson concurred.

The Chairman asked if the members agreed that it was necessary to pass a bill at the Special Session for the purpose of conserving fuel and set the 55 mph limit which is required by the federal government and was given an affirmative answer.

The Chairman called attention to a memo prepared by Mrs. Embick which contains a summary as to the rationale for presenting the bill to the Special Session. The memo which is attached to these minutes as Appendix C explains what action is required by a state in order not to have the cutoff of federal funds on the federal highway aid construction programs. She noted that the requirement that action taken by the Governor or state agency to achieve the "no maximum speed limit above 55 mph" could be considered as already complied with because Oregon does not have a maximum speed limit above 55 mph. Mrs. Embick explained that the requirement of placing the signs showing the 55 mph speed limit has already been accomplished. She recalled that a letter to Chairman Cole of the House Judiciary Committee from the Attorney General under date of January 9, 1974 states that to comply with these federal standards further action must be taken to establish a maximum speed limit and which is contained in the committee draft as well as the draft proposed by the Attorney General.

Mrs. Embick called attention to page 2 of the memo which summarizes the proposed committee draft and said that the draft goes further than the Attorney General's proposed draft and states that the affirmative defense is not available to a charge of violating the fuel conservation maximum speed. The draft was drawn in terms of the draft on Speed Restrictions and when the decision has been made by the subcommittee, the bill would be drafted in terms of the present statutory sections and not in terms of the proposed sections on Speed Restrictions. The bill sets a maximum limit of 55 mph which would be called the fuel conservation speed limit and the defense with regard to the basic rule under the proposed revision would not be available if the driver is cited for violating the 55 mph limit.

Mr. Paillette reported that by repealing the existing basic rule statutes, ORS 483.102 and 483.104, and restating it as is done in sections 1 and 2 of the committee's draft, the bill would be in the form in which it could be presented to the Special Session. Section 4, he said, would make it clearer to the driver where he stands with respect to the basic rule, rather than attempting to place this section into the existing basic rule statute.

The Chairman asked Mrs. Embick if it were unacceptable to the federal government to have the defense of the basic rule over the 55 mph limit. Mrs. Embick recalled the conversation between Walt Barrie, counsel for the Transportation Commission and the federal counsel for the region and it was discussed that if the committee considered a bill which used the term "maximum" there could still be the defense of the basic rule and it need not be deleted in regard to exceeding the 55 mph limit, but she called attention to Attorney General Johnson's statement that this decision must go through several levels and no one at this time can really say what might happen. The bill which comes from the Attorney General's office, she said, does not eliminate the basic rule as a defense to exceeding the fuel conservation speed limit.

Senator Carson pointed out that when asked by the federal government, the answer would be that under the conservation bill there would be no basic rule but when asked by the public, they would be informed there was such a rule. He stressed that he could not support anything which does not present the clear facts and explain that the bill has a ceiling of 55 mph because of the conservation speed limit.

The Chairman asked Mrs. Embick if, with the affirmative defense being built into the basic rule, the same defense could be built into the fuel conservation maximum speed and it was explained that the defense to violating the conservation aspect would be the gas mileage and there could not be an affirmative defense as it would relate to the road and weather conditions and not to conservation.

Representative Marx asked how it could be justified allowing someone to have a defense for violation of a statute when it involves safety but not allowing him the defense when it involves fuel conservation.

The Chairman inquired if the members were in agreement to delete from the bill any type of defense to the violation of the 55 mph maximum. Representative Marx responded that he thought the public should have a defense. Representative Bunn wondered if an affirmative defense could be set on the safety factor under the fuel conservation speed limit. He thought that a conservation measure could be written which would give them the defense under this situation. On the fuel conservation speed limit, he said, there cannot be a basic rule to allow a driver to go beyond the 55 mph maximum because there would then not be a 55 mph maximum.

Mr. Paillette explained that Oregon established the 55 mph speed under Transportation Department rule long before the Federal Conservation Act was passed and he did not believe it was merely an act of complying with the federal act to secure federal funding as Oregon had already determined the need for the 55 mph limit to conserve fuel.

The Chairman noted that it could be narrowed down as to whether the affirmative defense is based on conservation or safety, or both.

Senator Carson asserted that the committee should not get into the conservation issue on the affirmative defense as he would not know what evidence would be given by the defendant to allege the affirmative defense. Representative Bunn asked if it might be feasible to write in the safety defense language above the 55 mph limit and Senator Carson thought that writing in the affirmative defense language would be the effect of this.

Mr. Paillette pointed out that on one hand, it would state that the driver cannot exceed the 55 mph limit and on the other hand it would state that even though the driver is going 65 or 70 mph he could appear before the judge and argue that it was reasonable and prudent because it was safe. He felt that under these circumstances it would be better to leave the statutes alone, as it would be difficult for the judges to weigh one situation against the other.

The question was placed before the members as to whether there should be any defense to a speed in excess of 55 mph and if there was such a defense, whether it should be based on safety or conservation, or both.

Senator Carson moved that the affirmative defense should not be available under the fuel conservation 55 mph maximum speed bill.

Motion carried unanimously.

The next question arose with respect as to who makes the determination on the entire energy question and the Chairman stated that in speaking to Highway and Motor Vehicle personnel, she was advised they had little material available to them to make any such determination and she was of the opinion it be made by whatever energy entity is established.

Senator Carson commented that the purpose of the speed limit is based strictly on conservation and not traffic safety and he thought it appropriate to take it out of the Department of Transportation and place this decision-making authority with whatever energy agency is established. In doing so he realized that it would, in effect, be setting up a second speed control board but this will allow the Speed Control Board on Traffic Safety to do as it has done in the past. As this is an energy decision, it should be labeled and treated as such, he said.

Representative Marx asked if the bill would be amended to give authority to the energy board to make the determination and was advised by the Chairman that the bill setting up the body should be considered first, based on the assumption that there will be such a body established.

Representative Bunn inquired if the bill should be amended to require public hearings. Senator Carson stated that the target would be to address the issue of public hearings to the full area of conservation and the hearing provision should be provided in the proposal which establishes the energy agency.

Senator Carson moved to delete from section 3 "Department of Transportation" and insert the name of the proposed energy agency in its place.

Motion carried unanimously.

Mr. Paillette asked, with respect to section 3, what name the committee would desire to place in the draft in lieu of Department of Transportation. Senator Carson responded the section could be stated that "Whenever _____ determines there is a need to conserve fuel because of current and imminent fuel shortages. . . ." although he expressed dissatisfaction over the use of "current and imminent" in the section.

Representative Marx asked if the energy council would only determine that there was a need for setting the limit and then the duty of setting this limit would fall on the Transportation Department. He believed it would be wiser to have the DOT set this limit. Senator Carson stated that his preference would be that the energy agency would set both the need and the speed as it is not being set relevant to safety factors. When asked if there would be a problem created by having three groups setting limits, Mr. Sipprell stated that this would create an awkward situation and suggested that consideration be given to allowing the energy council to notify the Oregon Transportation Commission that there is in fact a problem and it can then set the speed. The Transportation Commission would not make a further determination that setting the speed would conserve fuel in that it would already have been decided by the energy council, he said.

Mr. Sipprell proposed that the language in section 3 be amended to state that "Whenever the Oregon Energy Council determines there is a need to conserve fuel . . . it shall notify the Oregon Transportation Commission and upon notification the Oregon Transportation Commission is authorized to designate a maximum speed" With this language, he said the Transportation Commission would become the vehicle for enacting the maximum speed.

Mrs. Embick raised the question as to whether there is a distinction between fuel generally and fuel appropriate to vehicular traffic, i.e., automotive fuel vs. furnace fuel.

Senator Carson did not believe it appropriate to say that if there is a shortage of gasoline there might be a shortage of other fuel, and he thought it should not be limited to gasoline. Mr. Paillette agreed and stated that if it is an energy crisis and given to the Oregon Energy Council, then the argument for limiting it would disappear.

Mr. Paillette asked if the title "Oregon Transportation Commission" would be used instead of "Department of Transportation" and received an affirmative reply.

Mr. Paillette next asked if as a procedural matter, rather than writing a separate bill, the Judiciary Committee amendments could be submitted to the bill setting up the energy council. The Chairman thought the energy bill in question would be very controversial and that it might be feasible for the committee to submit its own bill to which Senator Carson concurred.

Referring to the penalty clause in the proposed draft, the Chairman alluded to the Attorney General's suggestion that a fine of \$100 be inserted in the draft. Senator Carson was of the opinion \$100 would not be much of a penalty and Judge MacArthur advised it would be simpler to retain the same penalties for violation of the basic rule. A violation of the basic rule for going under 55 mph has a \$500 fine or 90 days and he would find it difficult to understand placing a fine of \$100 for going over the 55 mph limit. He explained that the more uniformity in the law, the easier it is for those on the bench as well as the motorists to comprehend it. Judge Norblad agreed with this assessment and stated that when a driver appears before the courts and has a bad record, there should be more than a \$100 fine imposed.

Representative Bunn moved that the penalties applying to the basic rule be applied to section 3.

Mrs. Embick called attention to subsection (2) of ORS 483.990 which pertains to penalties for violation of the basic rule and which states:

"Any violation of ORS 483.102, unless such violation occurs under the conditions of subsection (3) of this section, is punishable, upon conviction, by a fine of not more than \$25, or by imprisonment for not more than five days, or both."

Subsection (3), she said, would state that any person who violates by going at a speed in excess of those designated under ORS 483.104 is subject to punishment of a fine of not more than \$100 or imprisonment of 10 days. It was her interpretation that by violating the basic rule by exceeding the speed designated in ORS 483.104, the penalty is \$100 and if violated by going at a speed which is unsafe under the basic rule but is less than that designated for the area,

the punishment is not more than a fine of \$25. Because of this, Mrs. Embick indicated that Representative Bunn's motion would have to be more definite.

Mr. Paillette pointed out that it should be kept in mind that if the committee adopts the draft, it would be necessary to amend ORS 483.990 inasmuch as it refers to ORS 483.102 and 483.104 and the penalties could be made uniform.

Representative Bunn amended his previous motion to section 3 to make the penalties uniform.

Motion carried unanimously.

Mr. Paillette noted that the Consulting Committee to the Committee on Judiciary would be meeting on February 1 and that the staff intends at that time to inform them of the discussion at today's meeting and the position taken by it. Senator Carson thought it would be of help if the Consulting Committee would endorse the bill, provided it is agreeable to the position taken. He expressed concern that the members of the legislature could reject the bill unless they were advised as to its merits and recommended that an attempt be made to bring together all the information presented to the committee as well as related studies by the various agencies, and submit these to the legislative body along with a draft of the bill and a report from the staff relating to it. Representative Bunn thought it to be appropriate to ask the members of the legislature to express their views and recommendations as to the different areas of the bill.

Mr. Paillette stated that the House Judiciary Committee would be meeting on Thursday, January 31, with respect to Special Session bills and proposed that the committee draft be submitted to the House Judiciary Committee and that they be requested to submit it to the Speaker's office for submission to the Rules Committee. Senator Carson agreed that this would be appropriate and the Chairman concurred.

Speed Restrictions; ORS 483.106 and 483.108

Mrs. Embick recalled that sections 3 and 4 had been set apart for the committee's consideration until such time as Mr. George's report with respect to the procedures and standards used by the State Speed Control Board for setting speeds within cities was available to the members.

Judge McArthur spoke to this subject and said his understanding was that it had been suggested that legislative criteria be established for the actions of the Speed Board and he believed it should be set by rule of the Speed Board itself. He next spoke to the basic rule provision and asked that in revising the code, consideration be given to abolish the basic rule and go to a statutory system of speed

limits, his reasoning being that the basic rule was an extremely difficult area for judges and officers to interpret and created confusion to the motoring public. He pointed out that the Speed Control Board and Transportation Division have engineering studies to determine what speeds should be set but indicated that it is set at a speed which cannot be enforced. By statute, he said, the legislature has directed that the posted speed in residential districts shall be 25 mph but that most police departments have a 10 or 15 mile rule which is based on the fact that there must be a 10 or 15 mile violation in order to justify harassing the public by issuing them a citation and the result is general confusion to the motoring public.

Senator Carson remarked that the committee has been considering a posted speed with the burden shifting to an affirmative defense and that it will continue to discuss a maximum speed throughout the revision of the code.

Mr. Bergstrom spoke to the situation of speed in alleys and noted that in examining the law, the only thing the city could do as far as signing or enforcing in an alley was on the basis of 25 mph because it was in a residential area. Twenty-five miles per hour is not an appropriate speed for alleys, he said, because of visibility and other problems and is an unsafe speed. He mentioned that the city had contacted the State Speed Control Board but it was unable to do anything on a blanket basis and because of this Mr. Bergstrom asked that consideration be given to include a speed of 15 mph for alleys and that it be done on a blanket basis.

Senator Carson noted that there would need to be a definition of alley and asked if Mr. Bergstrom would assist the committee with this definition. The Chairman advised that Mrs. Embick would contact Mr. Bergstrom on this issue.

Mr. Bergstrom spoke in support of a maximum speed rather than the basic rule and the affirmative defense provision. Senator Carson wondered if the Speed Control Board should have a 10 mph "fudge" factor built in. He alluded to Mr. Bergstrom's statement with respect to the setting of speeds in residential areas and the actual enforcement of those speeds, which, according to Mr. Bergstrom had a 10 mile tolerance built in. Mr. Bergstrom believed that the maximum speed should be set in Oregon, although Senator Carson did not believe that setting a maximum speed would solve this problem as he thought most law enforcement personnel would still give a tolerance factor to the driver. He suggested that the Speed Control Board be allowed to compute the tolerance factor when setting the speed and set the speed at 30 mph, for instance, when the driver could safely travel at 35 mph.

Mr. Williams subscribed to the comments made by the previous witnesses and in addition stated that he supported the present Speed Control Board policies and urged that the policies be made by the Board and not by the legislature. Mrs. Williams contended that there should be a county representative on the Speed Control Board. With respect

to the basic rule, Mr. Williams explained that Eugene also has a tolerance factor built into its speed enforcement and called attention to school zones where an individual travels at a 30 to 35 mile speed before being cited. He suggested that the legislature mandate that there cannot be more than a five mile grace differential given by the enforcement agencies and that the State Speed Control Board take into consideration this 5 mph problem. Mr. Williams further recommended that if possible, the maximum speed could be placed within the urban areas and the basic rule retained in the outlying areas, although he thought that in some instances the maximum speed would be feasible in those areas as well. In answer to Senator Carson's question, Mr. Williams stated that he had worked in a state which had the maximum speed and the same problems existed and this was his rationale for proposing that a five mile tolerance factor be built in when setting speeds. He did not necessarily believe that the only solution to the problem would be the maximum speed.

Mr. Adams told the committee that the position taken by the Oregon Association of Chiefs of Police would be to support a set speed, eliminate the basic rule, have a 55 mph top speed and a complete revision of the traffic laws. Mr. Adams commented that a new chairman will shortly be appointed to the Association and that a member intends to be in attendance at all future meetings of the Judiciary Committee. The Chairman suggested that Mr. Adams, at the meeting with the Association, discuss the draft with the members and bring back any comments and recommendations which they may offer.

The subcommittee recessed for lunch at 12:10 p.m., reconvening at 1:30 p.m.

Mr. George outlined for the members the details of the meeting of the State Speed Control Board on January 9 which had representatives in attendance from the League of Oregon Cities, Association of Oregon Counties, the Safety Commission from Washington County, as well as representatives of several counties and cities. Mr. George reported that several ideas resulted from the meeting which he believed would greatly improve the operation of the speed zone investigations and make the Board and Transportation Commission more responsive to the needs of the communities. The general consensus of those in attendance was that the engineering portion, including the 85 percentile aspect, of the investigation was satisfactory although there was not enough input with respect to local desires. Those represented at the meeting concluded that an official representative from the counties be appointed to the Board, which requirement is not contained in existing law; that in the conduct of field investigations, the Board should contact the county or city representative who initiated the request and determine if they wish to make the actual field investigation, which he said has been requested by several cities and counties. If the agency did not have the manpower or expertise to actually perform the study, several expressed interest in being present on the field investigation, he said.

Legislating an enforcement tolerance was also discussed at the meeting, Mr. George reported, but he was not aware that a position had been taken on this issue although several of the city representatives were proponents of this concept. The Board is prepared to institute immediately the operational features of these issues and the committee could examine the legislative possibilities, he explained.

Mr. George next referred to a representative from Clackamas County who had attended the morning meeting and asked that it be stated for the record that Clackamas County favored the maximum limit on all statutory speeds with the basic rule applying below.

In answer to Senator Carson's question, Mr. George said that the tolerance level is not built in when considering the 85 percentile speed. Senator Carson pointed out that in taking the 85 percentile method at a given area and setting the speed at 45 mph, for example, it is in effect setting a 50 or 55 mph speed because of the enforcement being five or 10 miles above the 45 mph speed and which is much higher than the 85 percentile. Mr. George commented that it should be considered building in an enforcement tolerance by legislation.

Mr. George added that at the meeting of the Speed Board it had been proposed to place into law a requirement for the governmental body requesting the speed zone investigation to suggest a speed and that this requirement be written into ORS 483.108. He thought this could have a depressing factor on the use of the 85 percentile speed.

Mr. George thought the problem was that there has not been enough local data on their studies and believed that by having them run the speed check or have the representatives with them when in the field, will present information the Board has not previously had. Senator Carson agreed and said that rather than attempting to eliminate the 85 percentile it might be better to try to build a greater awareness for local conditions.

Senator Carson recommended the division of ORS 483.108 into two sections, one which concerns itself with the makeup and appointment of the Speed Control Board and the other to relate to the duties of the Board.

In answer to Mr. Paillette's question, Mr. George stated that the Board would wish the statute to require that (1) the requestor of the investigation accompany the field investigator in the field or if the local body has the proper equipment and manpower they are allowed to perform their own study; (2) a county representative be added to the Board and (3) it be made a legal requirement that the body requesting the speed investigation submit a recommended speed to the Board.

In answer to Senator Carson's question, Mr. George said the Board would prefer that the remainder of the rules and regulations be left under the Speed Control Board.

Senator Carson moved that section 4 be amended to divide it into two sections; add a county representative to the composition of the Speed Control Board; authorize the Board to allow a city or county to do its own field investigation and report to the Board; give the cities and counties an opportunity to participate if the field investigation is performed by the Board; require that the city or county requesting a change in speed state in the application the speed which it recommends.

Motion carried unanimously.

ORS 483.106

Mr. George called attention to the use of the words "Department of Transportation" in lieu of "Oregon Transportation Commission" and said that in many instances the committee drafts have been changed to delete "commission" and insert "Department of Transportation" and that often the section involves what would be considered routine operational functions which should be considered by the Highway Division. Mr. Paillette commented that HB 3166 substituted these titles and on this basis the drafts have been changed to conform to the new language.

The Chairman thought the Department of Transportation should delegate within itself whomever it wishes to set the limits and retain the ultimate responsibility. Senator Carson stated there was a substantial difference between a department-making decision and a commission-making decision and thought the first question would be who shall be authorized to make the decision. If it is the Department who will decide, it must be defined as to who is the Department.

Mrs. Embick called attention to section 1 of HB 3166 which states that "Department" means the Department of Transportation and that "Director" means the Director of Transportation. Senator Carson noted that the language in the draft would state that the entire Department of Transportation would have decision-making authority.

Senator Carson asked who hired the Director and was informed it is done by the Commission. He said he would not object to having the authority given to the Director as long as he would be under the control of the Commission. The Director would then be responsible for passing on duties to the various heads of the departments.

Mrs. Embick was directed by the committee to redraft section 3 with the assistance of legislative counsel.

Mrs. Embick called attention to section 4 and stated that the Highway Commission is limited to setting speeds only on state highways and not within cities, although under subsection (4) of ORS 483.108 the Speed Control Board has authority to set the speeds in municipalities. She noted that the state highways incorporated within city limits has been excluded and pointed out that subsection (4) has been amended to

give jurisdiction to the Speed Board to set speed limits on all highways not subject to being set by the Transportation Commission. Mr. George commented that the Speed Board has been requested at times to set speeds in recreational areas and forest lands and this amendment will incorporate those areas as well.

The subcommittee agreed that the amendment be incorporated into the previous motion by Senator Carson.

Mrs. Embick called attention to section 3 and the new language to the section which includes authorization for the establishment of speed designations at different times, for different types of vehicles or prevailing weather conditions and which is language contained in the UVC. Mrs. Embick thought it was becoming more prevalent throughout the country to set different speeds for different vehicles and stated it is not uncommon to have a day speed and a night speed variation. Senator Carson did not favor the proposed amendment and said he would hesitate giving this wide authority to the Department of Transportation.

Senator Carson moved that section 3 be amended to delete the new language in lines 10 through 15.

Speaking on his motion, Senator Carson stated it was his opinion this type of authority should rest with the legislature and he would be unwilling to delegate this authority to the Department of Transportation.

Representative Marx mentioned that if there were problems concerning certain parts of the highway at different times of the year the Department of Transportation should be allowed enough flexibility to respond to those specific situations. Mr. George pointed out that when special problems arise and where special driving provisions are needed, he believed it could be handled by temporary signing and they have, under the proposed revision, the statutory authority to set a temporary speed zone. Mr. George said the Board already has the means and devices to handle this type of situation and was in agreement with Senator Carson that it was a legislative, rather than administrative area.

Mr. Paillette suggested that the commentary in the final report indicate that the proposals from the UVC were examined and if rejected by the committee that the reasons be stated for their exclusion.

Action was taken on Senator Carson's motion to delete lines 10 through 15 of section 3.

Motion carried unanimously.

Driving on right side of roadway; Preliminary Draft No. 1

Mrs. Embick explained that the sections in the Article are in large part, but not entirely, based on the UVC ss 11-301 through 11-313. She

commented that with closer examination of the draft it will become more apparent that the definition in the present code of "roadway" as compared to the definition of "highway" will need to be considered and that the roadway definition will perhaps be changed as it is not in conformity with the UVC, which excludes the shoulder. Subsection (4) of ORS 483.020 defines roadway as that portion of a street or highway improved, designed or ordinarily used for vehicular traffic, and all rules with respect to the position of the vehicle on the roadway or highway are stated in terms of "position on highway" Mrs. Embick explained. Highway is considered to be made up of either one or two roadways.

Section 1. Driving on right side of roadway. Mrs. Embick reported the section states that the driver commits the offense of failing to drive on the right if he fails to drive on the right half of the roadway of sufficient width, and contains exceptions whereby the driver would not be in violation. Paragraphs (a), (b) and (c) are contained in existing law, but (d) is not considered an exception in the Oregon code. Paragraph (e) is UVC language and is the major difference as far as any change in existing law, as there is no exception for a one-way roadway.

Mr. Paillette called attention to the commentary on page 2 and stated that the ORS section was inadvertently typed as ORS 483.216 and should be 483.218 in line 3 of the last paragraph.

In answer to a question by the Chairman, Mrs. Embick indicated that subsection (2) of ORS 483.302 was not contained in the draft because the proposed section 2 will require the driver to stay on the right side if he is a slower driver as compared to ORS 483.302 (2) requiring the driver to be in the right side of the roadway at all times. ORS 483.302 (2), (a) and (b) are changed so there is not a mandatory duty to stay in the right side and this is accomplished in section 1.

Captain Williams referred to the definition of roadway and stated that it would cause some problems unless other changes were to be made. For example, roadway, not including the shoulder, would mean under existing law that a violation would not occur unless it occurs on the main traveled part of the public highway. If it is being said that roadway replaces highway, the effect would be that illegal operation on the shoulder would be permitted. He called attention to the hitchhiker and said it would then mean that this would apply throughout the state, in a two lane as well as a four lane and stressed that many of the two lane highways are so narrow that a hazard would be created by having the hitchhiker there.

Mrs. Embick commented that the hitchhiking provision states that the person may not stand in the roadway and the Attorney General's opinion interprets roadway to include the shoulder. She was of the opinion it should perhaps be stated where the hitchhiker is allowed to stand. If he is not to be on the highway, she said, and this is really what is meant by roadway, it should be that the committee redefine

where they should stand. She mentioned that there was no intent to change the definition of highway in any manner but that it should be studied when talking about where a vehicle can be on the road, where it can be on the paved portion, across the line and on the shoulder, and she stressed the importance of examining if there is a difference between the highway and roadway definition.

The Chairman was concerned at what point the definitions will be included in the Article and Mr. Paillette thought there was a need to identify the definitions in the Uniform Code and compare them with the existing Oregon code definitions, and which is being done in the commentary. He stated that it would be difficult to write an Article containing the definitions until it is known what substance is in the code which will need to be defined.

Senator Carson thought it advisable to seek the advice of the Highway Division engineers as well as the Traffic Safety personnel. He believed the problem would arise as to the size of the shoulders on each side of the highway and that perhaps shoulder, right of way, traveled portion, etc. should be defined. When there is a concern of the Highway Department or safety personnel it would be in their power to widen the shoulders, he continued. It was further expressed that an attempt is being made to redefine a series of words for every conceivable engineering problem and if the concern is that the committee wishes to restrict the people from the graveled portion, it would be within the Division's power to determine what use of the graveled portion should be authorized. It could then be defined by the committee and the Highway Division would then meet the safety problem or hazard by redesigning the highway, whether to extend the shoulder or whatever, and this is the position which could be taken, he said.

The Chairman commented there were three problems: the careless driver on the shoulder and whether he is in the jurisdiction of law enforcement officers; the parking lot aspect and the definition of hitchhiker. She was of the opinion these should be separated and stated outright in each case.

Mrs. Embick stated that the Attorney General's opinion is being relied upon as to what is legal for hitchhiking but was not aware that it is enforced exactly the same in all places. She thought there should be a definition in the code as to what the paved portion of the highway is and it cannot be done by the definition of highway as it is the right of way from one side to the other.

Mr. Paillette stated that there could be a general definition which would be appropriate for most places in the code. The definition of roadway, he said, would be suitable for such as driving on the right side. Presuming hitchhiking would be prohibited, there would be a specific definition written into that section to state "As used in this section 'roadway' means:" Senator Carson disagreed with this approach and said that one of the problems relating to the existing

vehicle code is that the definitions are changed and he wished to avoid this problem and have a chapter definition so that roadway would mean the same regardless of which section it was in. Mr. Paillette explained the problem would arise by having a general definition inasmuch as there will be areas where it will not conform. Senator Carson stated that terms such as roadway and right of way could be defined and if it did not fit the hitchhiker, there could be another definition or the Highway Division could conform to the definition.

Ms. Howard suggested placing language in the hitchhiking section to state that "A person shall not stand on a portion of a highway which has been designed primarily for vehicle use." This, she thought, would include the shoulder.

In answer to the Chairman's question, Mrs. Embick explained that Oregon has only one section in its code which relates to hitchhiking. The UVC, s 11-507, uses the definition that relates to roadway as opposed to highway and is more lenient as to where the hitchhikers are allowed to stand. To determine the definition of roadway, she was of the opinion it was important to define where the vehicle was on the highway rather than relying of the single statute with respect to hitchhikers. She explained that there would be no inconsistency in the definition of roadway in any of the other parts of the code and that the provisions on hitchhikers would be considered in an Article on pedestrians.

Representative Bunn asked Captain Williams if he had knowledge as to how much of a problem, in terms of traffic safety, is created by a pedestrian walking on the left hand side on the graveled portion of a two lane highway. Captain Williams responded that pedestrians, as well as bicycles, create a traffic hazard and thought that the careless pedestrian is the problem rather than as to which side of the road he is walking on.

Representative Bunn next asked if pedestrians should be required to stay off the graveled portion but walk on the dirt portion. Captain Williams said there is a provision in the code which would restrict the pedestrians from the freeways with proper signing.

Representative Marx asked the number of citations issued for violation of the hitchhiking provisions and Captain Williams responded that he would secure this information for the committee when it considers the draft on the rights of pedestrians.

Referring to paragraph (e), subsection (1), Mrs. Embick explained that it is not contained in existing law and if it were adopted there would be no obligation for the driver to remain in the right lane on a one way roadway unless he were driving slowly. The paragraph would not apply to two directional traffic. In answer to the Chairman's concern that it could be interpreted to relate to a road which would be a one lane road and such as a forest road accommodating one vehicle, Mrs. Embick stated that to clarify the language it could be changed to "uni-directional" or "traffic proceeding on one way only" so that it would not appear to relate to the width of the road.

Section 2. Slow driver duty to drive on right. Mrs. Embick stated the section defines the slow driver as one who drives at less than the normal speed and who is required to drive in the right lane at all times except when passing or preparing to turn left. She pointed out that the UVC contains sections 1, 2 and 3 in one section but she believed it would be difficult to locate, therefore it is contained in the three sections.

Section 3. Duty to drive on right on two-way four lane roadway. The provisions relate to a two-way four lane roadway and speaks to one part of the pavement, not the highway composed of two strips of pavement.

The Chairman referred to paragraph (b), subsection (2) of section 2 and asked if it could be stated "When preparing to turn left" and delete the balance of the phrase. Captain Williams thought the language in paragraph (c), subsection (1) of section 3 which states "When making a left turn" would appear to be more clear and proposed that this language be substituted in sections 1 and 2.

Mrs. Embick indicated that the rationale for using the language was to specifically state where the vehicle is authorized to make the left turn and covers various terms which will be placed in the general definition section. It is being attempted to state that it must be an authorized place where the turn can be made.

Speaking to section 2, Captain Williams stated that ORS 483.304 (1), (c), requires that the vehicle in the left lane must move to the right when another vehicle is approaching from behind. He asked if the intent was to drop this requirement. Mrs. Embick stated that it was her contention that section 1 would require the vehicle to stay in the right at all times unless turning left or passing and she thought that paragraph (c) would be an exception for the vehicle that is passing and does not set out any separate duty of a vehicle which is being passed to go to the right side. She stated that ORS 483.310 requires that the driver of an overtaken vehicle give way to the right. Captain Williams recalled another statute pertaining to a two-lane highway which requires a person to drive off to the right providing the person coming from the rear is not in violation of the basic rule and he stated there is no such restriction in this section as the person can come up at any speed and has the left lane to himself.

The Chairman asked why there should not be a requirement for the driver to use the right lane at all times unless when passing. Mr. Sipprell responded that the provision in paragraph (c), subsection (1) of ORS 483.304 was to permit a situation whereby there were two to four lanes of traffic and a left turn could be made from two or more lanes. If the driver is required to drive in the right lane and approaches a slow moving vehicle he must move to the left to pass and then return to the right lane and will introduce a weaving movement which is a potential accident maker, he said. Mr. Sipprell thought this question could partly be answered in paragraph (e), subsection (1) of section 1 of the draft which would permit driving in the left lane.

Captain Williams called attention to section 2 which would keep most of the slower traffic to the right and which would be applicable to any roadway. Major Tichenor observed that all drivers could not be restricted to driving on the right lane as these lanes are being built to accommodate traffic and should be utilized.

Captain Williams proposed the language "When making a left turn" be substituted for "When preparing to make a left turn" in sections 1 and 2. Senator Carson thought there to be a difference in making a left turn and preparing to make a left turn and said that when there is a slow driver such as in section 2, he would doubt making the change in that section would be feasible. He did not believe it was the intent to say that the slow driver was in violation of the statute up until the time he commits himself to make the turn as he is slowing up in preparation to making the turn.

Mr. Paillette thought this could be the rationale used by the UVC but questioned why it was not used in section 3, as he thought the logic would indicate that it would apply there as well as sections 1 and 2. Mrs. Embick indicated that section 3 concerns itself with the center line of a two-way roadway and the driver must never be in the left side of the center line of a two-way roadway unless he is making the left turn. If the language "When preparing to turn left" is deleted, she believed it would allow the slow driver to turn left from the right lane. Senator Carson was of the opinion the title to section 3 should read "Duty to drive to the right of the center line on two-way four lane roadway."

The question arose in section 2 as to the definition of "normal speed." Captain Williams stated that he and Ms. Howard would suggest that sections 1 and 2 be combined and the definition of a slow driver be deleted.

Ms. Howard expressed concern over the definition of the slow driver and although she believed the provision to be acceptable, she favored separating the duty to drive on the right on a two-way four lane highway and thought it more appropriate to use the language in subsection (b), s 11-301 of the UVC as part of section 1 as it is less difficult to understand.

Alluding to an earlier query as to the definition of "normal speed" Mrs. Embick wondered if the term "reasonable" would be more appropriate. She indicated that the rationale for placing the rule "at less than the normal speed of traffic" into a separate section was to emphasize that the person doesn't have the obligation to stay in the right lane on a one-way unless he is driving at less than the normal speed of traffic.

Representative Bunn posed the situation of a driver going at 60 mph and with a car approaching from behind at a speed of 70 mph. He asked if 60 mph would be a reasonable speed. Mrs. Embick responded that

there would be no obligation to be in the right lane under these circumstances and the person would undoubtedly not be cited for being in the left lane if he were going 60 mph as he would not be going at less than the normal speed.

Representative Bunn asked what criteria would be used for determining "reasonable speed" and commented that he was uncertain that the intent was clear that the driver was to move over to the right because of an approaching driver and he would doubt that a judge would consider "reasonable" in those terms. Mrs. Embick responded that section 6 considers the rules for overtaking on the left and that subsection (2) of that section sets out the duties for the vehicle which is being overtaken to move to the right. She called attention to subsection (3), line 8 and stated that "overtaken vehicle" should be replaced with "overtaking vehicle."

Mr. George called attention to subsection (1) of section 1 and the words "if he fails to drive on the right half of a roadway of sufficient width" and asked if this was intended to be an extremely narrow roadway. If this is the intent, he advised that there is not such a roadway in the public system in Oregon and proposed deleting "of sufficient width." The Chairman referred to forest roads and said this language would include such roads.

Mr. George next asked if there was a requirement that the driver stay on the right when on county roads and Mrs. Embick indicated the draft would cover all roads. She reported that there was no provision in existing law concerning the obligation as to where a driver is suppose to be on a single lane road and section 1 applies only to the duty to drive on the right if there is sufficient width. California, she said, has a statute which concerns itself with who has the right of way to proceed if it is only a one vehicle width roadway and she thought a similar provision could be considered for Oregon.

Captain Williams reported the problem in investigating accidents where two cars have collided on narrow roads and thought it should be spelled out as to how to determine who is at fault.

Mr. George called attention to subsection (1) of section 3 where it speaks to the driver driving to the left of the center line of a two-way roadway having four or more lanes for moving traffic. He said Oregon has four lane sections with a fifth lane being for hill climbing and in this case the driver is in effect driving to the left of the center line when in the third lane going uphill. Although he realized paragraph (a) might state this, he interpreted the exception in paragraph (a) to mean that only when directed to do so are they allowed to use those other lanes. Mrs. Embick responded that the official traffic control device as stated in the paragraph would mean that any type of signal or marking on the road would show the lane was authorized for use by vehicles going in that direction and it was not intended strictly for emergency use.

Representative Bunn expressed the view that the phrase in paragraph (a) "not otherwise permitted to use these lanes" would indicate that it is an emergency situation.

Representative Bunn moved the deletion of the phrase "not otherwise permitted to use these lanes" in paragraph (a), subsection (1) of section 3.

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

In respect to using the term "center line" in subsection (1) of section 3 and "left side of the center" in paragraph (a), Mr. Paillette explained this was the terminology used in the UVC and "line" was not defined. When speaking about an exception, he said, and using the term "official traffic control device" he would interpret this to mean there would be a sign indicating to the driver what is to be done.

Representative Marx moved subsection (1) of section 2 be amended to substitute "prevailing" for "normal" in line 3.

Representative Bunn was of the opinion that "normal" and "prevailing" were less definable than "reasonable" and wondered if this term should be used. Mr. Paillette advised that UVC uses the term "normal" and thought it advisable to use UVC language which is in effect in several states. By using such terminology Oregon can look to litigation which has occurred in other states to see how they have construed the same provision.

Representative Marx withdrew his motion.

Representative Marx asked if any decision had been made in paragraph (b), subsection (2) of section 2 as to whether the language should be changed to read "When making" rather than "When preparing to turn" It was the consensus of the committee that these were different functions and should remain in the draft as written.

Mr. Paillette thought it advisable to point out this distinction in the commentary.

Representative Bunn moved the adoption of sections 1, 2 and 3, as amended.

Representative Marx referred to paragraph (b), subsection (2) of section 2 and asked if the phrase "at an intersection, alley or private road or driveway" should be deleted. Mrs. Embick responded that it could be stated "lawful left turn" although she believed there could be some ambiguity in this and would need to be interpreted. Ms. Howard suggested it be stated "lawful" or else retain the phrase to take into consideration those who might make a left turn where it would be illegal. Inasmuch as what is written into the draft is UVC language it was the consensus of the committee that it be retained.

Vote was taken on Representative Bunn's motion to adopt sections 1, 2 and 3, as amended.

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

ORS 483.303. Slower-moving vehicle to permit overtaking vehicle to pass. Mrs. Embick explained that the reference to ORS 483.102 would be changed and it is intended that the statute be retained.

Section 4. Duty of driver of 6,000 pound vehicle, vehicle with trailer or camper to drive on right. The section is a redrafting of chapter 510, Oregon Laws 1973, which require that vehicles with a weight of not less than 6,000 pounds are to drive in the right lane when there are two lanes of traffic proceeding in the same direction and not to drive in the left lane when there are three or more lanes of traffic proceeding in one direction. No substantive change has been made.

Section 5. ORS 483.306. Passing vehicles proceeding in opposite direction. The section contains the additional requirement that on a roadway having width for not more than one line of traffic in each direction, each driver shall give to the other at least one-half of the roadway. Mrs. Embick stated that for consistency a change should be made to delete "line" in line 3 and substitute "lane" therefor. The section makes no substantive changes, she said.

There being no objections to amending section 5 to delete "line" and insert "lane" it was so ordered.

Representative Marx asked the necessity of retaining the provision inasmuch as the provisions for driving on the right were already in the draft and Mrs. Embick explained that there were no provisions stating the driver should pass on the right and believed it should be spelled out.

Representative Bunn moved the adoption of section 5, as amended.

Mr. George spoke to situations where the Highway Division has striped unequal lane widths because of sight obstructions where the drivers would need more maneuvering room on one side. He thought that the phrase "one-half of the main traveled portion" could be incorrect and proposed language stating that "unless otherwise directed by an official traffic control device" be added to the section.

Representative Bunn moved to further amend subsection (1) of section 5 by inserting "unless otherwise directed by an official traffic control device," following "direction," in line 3.

There being no objections, the amendment was adopted.

Vote was taken on Representative Bunn's earlier motion to adopt section 5, as amended.

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

Section 6. Overtaking a vehicle on the left. The section states the rules for passing a vehicle on the left and contains a change in that the rules are stated in terms of the roadway rather than the highway. The phrase "Except when overtaking and passing on the right is permitted" in subsection (2) has been added to the present code section, ORS 483.310, but is not a substantive change, Mrs. Embick reported, as it is already implied in existing law. Subsection (3) sets out in detail what the driver passing on the left must do in terms of safety, visibility, etc. and is in conformity with the Uniform Vehicle Code.

Representative Marx asked if many drivers, when passing, use an audible signal and Captain Williams replied it is not generally in use. Captain Williams reported that line 8 of subsection (3) which contains the word "overtaken" should be deleted and "overtaking" be inserted in lieu thereof.

Mr. George questioned the last sentence in subsection (3) with respect to the 200 foot measurement and remarked that as a practical matter the driver cannot judge distance between himself and an oncoming vehicle to this degree. Captain Williams agreed and said there has been a tendency to remove the distances in most of the traffic code because of these problems.

Representative Bunn moved subsection (2) of section 6 be amended to delete "on audible signal" in line 3.

There being no objections it was so ordered.

Representative Bunn moved subsection (3) of section 6 be amended to delete on line 9, following "practicable" the rest of the line and all of lines 10 and 11.

There being no objections it was so ordered.

Ms. Howard called attention to the words "completely made" in line 6 of subsection (3) and proposed the substitution of "completed" in lieu thereof.

Representative Bunn moved the above recommendation.

There being no objections, it was so ordered.

Representative Bunn moved the adoption of section 6, as amended.

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

Section 7. Overtaking on right. The section sets out the rules for overtaking on the right and are set out in subsection (3) of ORS 483.310. Mrs. Embick stated there are major substantive changes in the section. Under existing law there is no passing allowed on the right unless there are two lanes of traffic moving in the same direction. The proposed section would allow the driver to pass on the right when the vehicle he is overtaking is attempting to make a left turn and there would not have to be two lanes of traffic going in the same direction. The term "roadway" in the last sentence of subsection (2) is in conformity with the UVC definition, meaning the driver does not go off the paved portion of that section of highway. Under the existing definition, Mrs. Embick stated that perhaps the driver could go off the paved portion and onto the shoulder, as roadway includes the shoulder.

Representative Bunn spoke to the provision in paragraph (a) of subsection (1) and asked if it is the intent that subsection (2) would not allow a vehicle to go around on the right and into the graveled portion and Mrs. Embick answered in the affirmative. Ms. Howard commented that the term "having space" as stated in ORS 483.310 would give the driver permission to go around on the graveled shoulder. Captain Williams stated that from an enforcement standpoint the officer is prone to be more lenient if the move to the right is being made safely on the graveled shoulder. He said he was not in favor of passing on the right but it is needed to free traffic, and that restricting the shoulder will help. It was further pointed out that if roadway is eventually defined as the paved portion, subsection (2) would eliminate passing on the graveled portion.

Mr. Sipprell proposed that paragraph (a) of subsection (1) be amended to state that the driver has signaled his intention to make a left turn and said this would clearly indicate to the vehicle approaching what the driver was intending to do, and would pinpoint the liability. Mrs. Embick pointed out that another section will concern itself with the person making a signal when turning left and did not believe it would be redundant. Captain Williams suggested that when considering this section it be stated that the driver must have his signal on not less than 100 nor more than 500 feet when making the turn.

Representative Bunn moved paragraph (a), subsection (1) of section 7 be amended to delete "about" and insert "the driver has signaled his intention".

There being no objection to the amendment, it was so ordered.

Representative Bunn moved the adoption of section 7, as amended.

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

Section 8. Further limitations on driving on left of center of roadway. The section incorporates further rules with respect to driving on the right or left and is in conformity with the Uniform Vehicle Code.

Ms. Howard called attention to paragraph (b) of subsection (1) and stated that the phrase "unless such movement can be made in safety" is not contained in the UVC and was of the opinion that there would be different determinations made by the officer and the driver as to whether the movement was made in safety. Mrs. Embick replied that other states are using this language and she believe it wise to retain it. Captain Williams said the language is used in the intersection law and that most judges will hold that unless there was an accident, the movement was made in safety. Prosecution wise, Captain Williams stated it is difficult to measure the footage and it can be better explained that the movement was made unsafely. He suggested the deletion of the 100 feet and the insertion of language used in paragraph (a) which states "within such a distance as to create a hazard". Mrs. Embick indicated that the UVC has no safety allowance for passing at an intersection.

Ms. Howard suggested language be placed in paragraph (b) similar to that of paragraph (a) and state following "railroad grade crossing," "if in passing it would create a hazard to another vehicle approaching within the intersection." Captain Williams reported this would take into consideration the intersection but that the railroad grade crossing is to keep someone off that side when a train is approaching.

No action was taken by the subcommittee on section 8.

The next meeting was scheduled by the subcommittee for February 6.

The meeting was adjourned at 4:45 p.m.

Respectfully submitted,

Norma Schnider, Clerk
Subcommittee on Revision

A BILL FOR

AN ACT

Relating to speed regulations; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

Section 1. Section 2 of this Act is added to and made a part of ORS ch 483.

Section 2. (1) Whenever the Oregon Transportation Commission determines there is a need to conserve fuel because of current or imminent fuel shortages, it is authorized to designate a maximum speed upon all highways within the State. Such designation of a maximum speed limit shall not affect the provisions of ORS 483.102 and 483.104. The designation of a maximum speed limit shall also not be subject to ORS 483.106, 483.108 or 483.116(3). It shall be effective when appropriate signs giving notice thereof are erected upon all such highways.

(2) Any person who drives a vehicle upon a highway at a speed in excess of that designated pursuant to subsection (1) of this section shall, upon conviction, be punished by a fine of not more than \$100.

(3) Any person who violates this section may, in an appropriate case, also be prosecuted in the same proceeding for a violation of ORS 483.102 or of any other law of this State relating to vehicle speeds if the act also constitutes a violation thereof, and upon conviction separate penalties may be imposed.

Section 3. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on its passage.

COMMITTEE ON JUDICIARY

Proposed Fuel Conservation Maximum Speed Limit

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 section 3 of this Article 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.

(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. (Maximum speed limit for fuel conservation.) (1)

Whenever the Department of Transportation determines there is a need to conserve fuel because of current or imminent fuel shortages, it is authorized to designate a maximum speed of not more than 55 miles per hour upon all highways within the state. A maximum speed limit so set shall not be subject to the provisions of ORS 483.106 or ORS 483.108. It shall be effective when appropriate signs giving notice thereof are erected upon all such highways.

(2) Violating a fuel conservation maximum speed limit is a _____.

Section 4. (Availability of affirmative defense to speed offenses.)

(1) It is an affirmative defense to a charge 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.

(2) The defense described in subsection (1) of this section shall not be available to a person charged with violating a fuel conservation maximum speed limit designated under section 3 of this Article.

MEMO

Re: Proposed Fuel Conservation Maximum Speed Limit

Background Explanation: As of March 3, 1974, the sixtieth day after enactment of "Emergency Highway Energy Conservation Act," no highway projects under Title 23, U.S. Code, Section 106, will be approved by the Division Engineer, U. S. Department of Transportation, in Oregon unless there is not a maximum speed limit greater than 55 mph. This requirement will be considered complied with on submission by the state of:

- (1) Description of action taken by Governor or state agency to achieve the "no maximum speed limit above 55 mph";
- (2) Opinion of Attorney General that the state action taken is lawful; and
- (3) Statement that speed limit signs have been changed to show 55 mph limit.

Issue: Does the action already taken by the Transportation Commission and State Speed Control Board in setting 55 mph comply with section 2?

The letter to the House Judiciary Committee Chairman of January 9, 1974, from the Attorney General demonstrates that action already taken is not considered sufficient to establish a maximum speed limit not in excess of 55 mph.

Proposed Fuel Conservation Maximum Speed Limit

A. Summary

When the Department of Transportation determines there is a fuel shortage present or imminent, it may declare a maximum speed on all

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Proposed Fuel Conservation Maximum Speed Limit

highways in the state. A maximum speed so set to conserve fuel shall not be subject to the provisions of ORS 483.106 and 483.108 which allow alterations of the maximum speed limits of section 2 by the Department of Transportation and the State Speed Control Board based on engineering and traffic studies.

A violation of this maximum speed shall not be subject to the defense that the speed was reasonable and prudent under the conditions.

B. Section by Section Analysis

Section 2. (Maximum speeds.) The section would be amended to incorporate a reference to the proposed section 3, in line 3 of that section, so that the maximum speeds of section 2 may be those designated in that section, or under ORS 483.106 or 483.108 or section 3, except when a lower speed is required by the basic rule.

Section 3. (Maximum speed limit for fuel conservation.) The authority to set a fuel conservation speed limit is set out in section 3 which would be added to the Article on Speed Restrictions presently before the Subcommittee on Revision. The sections following would, of course, be renumbered.

A fuel conservation maximum speed limit could not be increased (or decreased) by the department or Speed Control Board. The limit would only be effective upon posting of signs.

Section 4. (Availability of affirmative defense to speed offenses.) This section would be amended by the addition of subsection (2) specifically making the defense not available to a charge of violating a fuel conservation maximum speed.

Issues:

- I. Proper location within state government of authority to determine fuel shortage.
- II. Should fuel shortage or conservation speed limit be distinguished from section 2 speed limits, e.g., citation of violation specify type of speeding charge?
- III. Maximum speed of 55 mph vs. maximum speed of 55 mph or less.
- IV. By removing the reasonable prudent driver defense of subsection (2), section 4, the 55 mph limit is absolute. What is Attorney General's opinion of need of this provision?