

COMMITTEE ON JUDICIARY
Subcommittee on Revision

March 12, 1974

Minutes

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

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

Also Present: Sgt. Albert Dean, Portland Police Department
Hon. Wayne Thompson, Municipal Judge, Salem
Miss Vinita Howard, Motor Vehicles Division
Mr. Ralph Sipprell, Department of Transportation
Mr. James Dutoit, Automobile Club of Oregon
Mr. L. E. George, Engineer, Highway Division

Agenda: SPEED RESTRICTIONS; P. D. No. 2
Sections 4, 5 and 6
Section 2; memo dated February 20, 1974

TRAFFIC SIGNS, SIGNALS AND MARKINGS; P. D. No. 1
Section 5

RIGHT OF WAY; P. D. No. 1
Sections 3 through 6 plus proposed amendment

PEDESTRIANS' RIGHTS AND DUTIES - Reference Paper

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

Approval of Minutes of Meetings of January 29 and February 2, 1974

The minutes of the meetings of January 29 and February 2, 1974, were approved as submitted.

Change in definition of "motor truck"

Mrs. Embick reported that the special session of the legislature amended the definition of "motor truck" to include only those vehicles with a combined weight in excess of 8,000 pounds. This change amends ORS 483.014 through HB 3336. This subcommittee had made this change in the appropriate section of the draft on Use of Roadway.

Speed Restrictions; Preliminary Draft No. 2

Section 4. Special speed limits set by Director of Department of Transportation. Mrs. Embick explained that section 4 deals with the setting of speeds that might need to be greater or less than those set in section 2 of the draft on Speed Restrictions. The authority would be vested with the Director of the Department of Transportation. She explained further that "maximum" had been inserted to conform with section 2 stating that maximum speeds should be designated.

Chairman Browne commented that perhaps the Transportation Commission could be given the authority to vary speeds rather than the Director. Mrs. Embick explained that by designating the Director with the authority, the machinery is set for the appropriate agency within the Department to go ahead and make the study on any possible change of speeds.

Mr. Sipprell commented that he didn't understand why "Director" was used rather than "Department of Transportation" because Department includes both the Director and the Oregon Transportation Commission.

Senator Carson stated that the Department of Transportation would also include all employees and the question would remain who within the Department would make the decisions. The subcommittee wished to vest the authority with appointed officials rather than employees.

Mrs. Embick stated that there had been testimony presented that it would not be appropriate for the Transportation Commission to meet each time a decision needed to be made on speed. The Department of Transportation, she continued, includes the Oregon Transportation Commission, the Director, Deputy Director and all personnel employed in the Department.

Senator Carson pointed out that the authority could be given to the Oregon Transportation Commission. Chairman Browne indicated that in addition to requiring an engineering and traffic study as set out in section 4, there could also be required a Chapter 183 hearing, if left to the Director, or the authority could be vested with the Commission.

In answer to a question, Mr. Sipprell said that he personally had no particular objection to the wording of section 4. In the past, he said, speed zones had been established by the Commission, but he could see no reason why this shouldn't be changed if the subcommittee and the legislature so wished.

Mr. Paillette informed the members that HB 3166, which passed during the regular session of the legislature last year, stated that "Department" means the Department of Transportation and "Director" means the Director of Transportation. The language of the draft originally stated that the Department of Transportation would have the

decision-making authority. Mrs. Embick was directed, he said, to redraft section 3 to refer to the Director and not to the entire Department. He stated further than the language "Department of Transportation" was placed in the draft to be consistent with HB 3166.

The Chairman informed the members that there is no reason why the subcommittee shouldn't amend HB 3166 to state the language precisely as it wishes it to be written. Mr. Paillette agreed that this could be done if the members wanted to change the designation to Transportation Commission.

Mr. Sipprell said that HB 3306, which passed during the special session, uses "Department of Transportation" and the Commission actually took the action rather than the Director.

A discussion ensued in designating the Oregon Transportation Commission with the authority to designate reasonable and safe maximum speeds.

Representative Bunn moved that appropriate changes be made throughout the draft substituting "Oregon Transportation Commission" for "Director" to conform with the amendment to section 4.

There being no objections, it was so ordered.

Senator Carson moved adoption of section 4 as amended. Motion carried unanimously.

ORS 483.108

Mrs. Embick stated that ORS 483.108 deals with the composition and functions of the State Speed Control Board. The subcommittee determined that the functions should be separated and put into a different section than that of the composition of the Board. It was Mr. George's suggestion that a representative of the counties should be a member of the State Speed Control Board, she said, and that the statute should set out the recommended maximum speed of the authority requesting a change in speed, and that the local government entity requesting a change should be authorized by statute to participate in the investigation into making a change.

Section 5. State Speed Control Board; appointment, vacancy, compensation and expenses of certain members. Mrs. Embick reported that section 5 states the composition of the State Control Board and provides for the appointment of two additional members.

Rep. Bunn remarked that since one of the main functions of the State Speed Control Board is to promote safety and since the Traffic Safety Commission is a part of the Motor Vehicles Division and the Administrator of that department is appointed to the Board, it might

be a good idea to include the Director of the Traffic Safety Commission as a member of the Board.

Sen. Carson expressed concern in appointing an administrator to a board and giving him the authority to designate a representative. In some cases, he said, the representative could be unknown and not too familiar with the subject. He suggested that the subcommittee designate specifically who would serve on the Speed Control Board.

Mr. Sipprell indicated that the language of the present statute reads the "Chairman of the State Highway Commission," and he has always designated a highway engineer as his representative. He suggested that "Director of the Department of Transportation" be deleted and "Administrator of the Highway Division" substituted.

Mr. Sipprell pointed out that Mr. George and his predecessor have both been in charge of the engineering and traffic investigation where speed zones are involved, both for the Commission and the Speed Control Board, and the highway engineer has been one of the three members of the Board. Mr. George, he added, also serves as Secretary of the Speed Control Board. In view of this, it was Mr. Sipprell's opinion that it would be inappropriate to designate the traffic engineer by statute because he will be making recommendations to the Board.

Sen. Carson agreed with Mr. Sipprell and suggested that "Administrator of the Highway Division" be substituted.

In answer to questions by Rep. Bunn, Mr. Sipprell answered that the State Speed Control Board meets once a month and it would not be an undue burden on the Administrator of the Highway Division to attend meetings of the Board since he has already been attending as a representative of the Chairman of the Transportation Commission.

Sen. Carson pointed out that the statutes read one way and because of the authority allowing those appointed to designate representatives, the Speed Control Board appears entirely different than was originally intended. It was his suggestion that the subcommittee specify who should serve and delete the representative capacity. He also suggested that an indication be made as to who should serve within the department.

In answer to a question by Sen. Carson, Capt. Williams replied that in his opinion the Superintendent of the State Police would be the logical person to represent that agency on the Board. Mr. Sipprell added that the proper choice for his agency would be the Director of the Highway Division rather than the Chairman of the Transportation Commission or Director of the Department of Transportation.

Rep. Marx stated that in his opinion the subcommittee should hear the opinion of a representative of the Motor Vehicles Division before making a policy decision that would affect that agency.

Sen. Carson moved that "Director of the Department of Transportation" be deleted and "Administrator of the Highway Division" be added to section 5, subsection (1), line 6.

The motion passed unanimously.

Rep. Bunn moved that "Administrator of the Traffic Safety Commission" be added to the list of persons designated to serve on the State Speed Control Board in section 5, subsection (1).

No vote was taken on this motion.

Mr. Bellamy commented that his agency would be willing to work on the Board, and many of the questions that arise in his office would be directly involved with decisions made by the Board.

Chairman Browne stated that there have been complaints from officials in her area that Speed Control Board members disregard their wishes. She wasn't certain whether the Board even asks for any input. The objections she had heard expressed were that the local authorities over a state highway or the city authorities over a county road don't have an opportunity to either request an investigation or to participate.

Section 6. Powers and Duties of State Speed Control Board. Mr. Sipprell said that section 6 deals with local agencies making recommendations to the Board. It was his opinion that this provision is definitely needed.

Mrs. Embick pointed out that section 6, subsection (2), provides for the local authority requesting an investigation to participate in setting a speed. In answer to a question by Chairman Browne, Mrs. Embick answered that the word "jurisdiction" is used to separate the duties of the State Speed Control Board from those of the Transportation Commission. The Transportation Commission has jurisdiction to change speeds on the state highways as set out in section 2 of the draft, and the State Speed Control Board has the authority to make studies on all other highways in the state, which are not under the jurisdiction of the Transportation Commission. This would include, she said, state highways within city limits, state parks, Bureau of Land Management roads and federal forest roads. In answer to another question, Mrs. Embick stated that if a state highway goes through a city, jurisdiction is vested with the Speed Control Board and a local agency may request an investigation. Sen. Carson added that the local agency would need to conform with the requirements in section 2.

Mr. Dutoit added that cities cannot designate speeds except on those streets over which they have statutory authority. He stated further that the Speed Control Board doesn't ordinarily make a change in speed on a particular street in a city unless it is requested to do so by the city.

Mrs. Embick explained that the draft makes provision for local entities to have the authority to make requests and work with the Speed Control Board. Mr. Sipprell added that the request for investigation would have to be made through the Highway Division since that agency would have the responsibility to maintain the highway. An example would be a reduced speed zone on a state highway which is routed over a city street.

Chairman Browne expressed her concern that a city may make a request to the Speed Control Board, but the Board may decide not to consider the request.

Mr. Dutoit said he had attended meetings of the State Speed Control Board as a member of the Citizens' Advisory Traffic Commission in Salem and as a result of the work of this committee, the Speed Control Board has expressed an interest in requiring local agencies to participate and want this written into the law.

An investigation should be required, said Chairman Browne, by the State Speed Control Board if a city requests one.

The subcommittee recessed for 15 minutes, reconvening at 11:00 a.m.

Chairman Browne requested Mrs. Embick to rewrite the draft to solve the problem of local agencies making suggestions and to require an investigation if a request for one is made.

Section 7. Designation of speed in complaint; use of radar; arrest without warrant in radar cases. Mrs. Embick suggested that the last sentence in subsection (1) be deleted because it was redundant.

Rep. Marx moved to delete the last sentence of subsection (1) of section 7.

Motion carried. Voting aye: Bunn, Marx, Browne. Absent: Carson.

Section 2. Maximum speeds. Mrs. Embick called attention to a memo dealing with a proposed amendment to section 2 of the Speed Restrictions draft. The added subsection would designate a speed of 15 miles per hour when driving on an alley, she explained. The definition of "alley" would be the one in the Uniform Vehicle Code. There is no speed currently set for alleys, she said. The designated speed would apply to any roadway which would conform to the definition of alley, unless otherwise designated in section 2 or unless a different speed has been set by the State Speed Control Board, she said. The memo on proposed amendment is attached as Appendix A.

In answer to a question by Chairman Browne, Captain Williams replied that in most instances alleys are dedicated as open to the public and arrests on them can be made for drunken driving. This does not apply, he said, to a private parking lot such as one associated with an apartment house.

Sgt. Dean of the Portland Police Department stated that his department enforces the traffic laws on alleys just the same as on other streets. There are a few alleys in Portland that are not dedicated, but they have a list of those, he said.

In answer to a question by Rep. Bunn, Mrs. Embick answered that the amendment on alleys would fit into section 2 of the draft. The definition of "alley" would appear in the Article covering definitions.

Rep. Bunn moved that the definition of "alley" from the UVC be included in the draft and that the maximum speed of "15 miles per hour when driving on an alley" be included in section 2.

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

Right of Way; Preliminary Draft No. 1

Section 3. Stop signs and yield signs. Mrs. Embick stated that section 3 deals with rules where stop signs and yield signs have been erected.

Mr. Sipprell commented that specifications involving stop signs and yield signs are normally approved by the Transportation Commission, which is included in the Department of Transportation. It was his suggestion that in the definition, "Transportation Commission" be used rather than "Director."

A short discussion ensued on deleting "Department of Transportation and inserting "Transportation Commission" in section 3. There was general agreement but no action was taken.

Mrs. Embick pointed out that at present there is no set line to indicate just where a driver is to stop at a stop sign. Section 3 sets out in definite terms where a driver is supposed to stop. It deals with a driver approaching a yield sign and the rules to be followed. The section provides that an offense has been committed if there is a collision involving a driver who has proceeded past a yield sign without stopping. The section also classifies the offense.

Chairman Browne moved "Department of Transportation" be deleted from the section and "Transportation Commission" substituted.

There were no objections to the motion and it carried. Sen. Carson was not present.

Mrs. Embick called attention to the proposed amendment to section 3, attached as Appendix B, dealing with an official traffic control device and its specifications. Mr. George, commented Mrs. Embick, had said his agency would recommended that it be included in section 3. This way, the Highway Division would make certain that the devices would be illuminated at night. The proposed section, said Mrs. Embick, is a restatement of subsection (4) of ORS 483.204.

Rep. Bunn moved that the proposed amendment to section 3 be adopted as subsection (3) and that subsection (3) become subsection (4).

There being no objection, the motion carried.

Rep. Bunn, in reference to subsection (2), expressed the opinion that unless there is a problem proving who is at fault, there would be no need for a presumption as set out in the subsection.

Miss Howard stated that since the presumption is included in the UVC, perhaps it should be included in the statutes. However, she continued, her agency has no definite opinions on the subsection and it was the opinion at one time that the whole section could be deleted.

Rep. Bunn moved that subsection (2) of section 3 be deleted.

Motion carried.

Rep. Marx asked if a person proceeded past a yield sign without stopping and was involved in a collision and it could be proved, whether he would have to bring forth evidence to overcome the charge. Mr. Paillette answered that if the person were being prosecuted for not yielding the right of way, it would be enough to get the case to the jury. He added that without the language, it might not be enough but it still would be a strong case. Also, he said, he didn't consider it a hardship to require a person involved in a collision near a yield sign to make the statement that he did yield and to furnish evidence.

Rep. Bunn moved that subsection (3) be renumbered as subsection (2) of section 3 on page 6 and that the commentary on page 7 be revised accordingly. (See Appendix B.)

Motion carried. Voting aye: Bunn, Marx, Chairman Browne. Excused: Carson.

There were some questions concerning the voting rules of the subcommittee. After some discussion, the Chairman asked to have the subcommittee rules inserted in the front of the committee notebooks.

Section 4. Vehicle entering roadway from private road, alley or place. Mrs. Embick reported that a suggestion had been made to add "or a police officer" to line 3 of section 4, subsection (1), after "device". She continued that the subsection states the rule for the right of way of a vehicle entering a roadway from a private road, alley or place. She called attention to the word "place" in subsection (1) which is included in the UVC. It would be appropriate so that all types of vehicles which are more commonly used, such as snowmobiles, mini bikes, etc., would be subject to the right of way rule.

Judge Thompson pointed out that the repeal of subsections (1) and (2) of ORS 483.206 as proposed by the draft would no longer require vehicles to stop before entering a roadway, unless otherwise directed by an official traffic control device. Presently vehicles are required to "stop and yield," he said. Rep. Marx raised the question that in many instances it might be safer to proceed without stopping -- simply slow down, yield and then proceed. Judge Thompson pointed out that the proposed change would substantially change the present requirement and would seem to relate to ORS 483.222 which relates to stopping before crossing sidewalks.

Sen. Carson expressed the opinion that a stop is extremely important.

Sen. Carson moved that "stop and" be inserted after "shall" in line 5 of section 4, subsection (1).

Motion failed. (See vote below.)

Rep. Marx again stressed that he didn't believe it was necessary to require all vehicles to stop and yield. Chairman Browne added that it was her belief that stopping often adds to a problem.

Sen. Carson questioned that stopping would impede traffic and asked in what circumstances it would apply. Although he believed in the yield concept, in circumstances where traffic is to blend, he felt that simply yielding is difficult to accomplish if a vehicle is to cross or move perpendicularly. To make a decision as to whether to yield or not would be extremely difficult when a perpendicular turn is required as a vehicle is approaching an intersection without stopping, he said.

Rep. Bunn's opinion was that there was too much danger in not requiring a vehicle to stop.

Judge Thompson said that citations are issued regularly in Salem for failure to stop before entering a public roadway. As far as traffic and safety are concerned, it was his opinion that there would be more concern with vehicles leaving parking areas and driving onto roadways at 15 or 25 miles per hour, because it occurs more often.

Vote was then taken on Sen. Carson's motion to amend line 5 of section 4, subsection (1), by inserting "stop and" after "shall". Motion failed. Voting aye: Bunn, Carson. Voting no: Marx, Chairman Browne.

Mr. Paillette explained that the 1969 version of UVC s 11-404, which is used in the context of the draft, differs from the 1971 version, which is included on page 16. The newer version uses the language, "the driver of a vehicle about to enter or cross a roadway" and the 1969 version states "a driver who enters or crosses a roadway".

Sen. Carson moved the substitution of the language of UVC s 11-404 as revised in 1971 for section 4, subsection (1).

There being no objection, the motion passed unanimously.

Sen. Carson served notice that he wished to bring up the amendment to subsection (1), section 4, which had failed in subcommittee, before the full committee.

Rep. Marx moved the adoption of section 4, ~~subsection (1)~~ ^{as amended}.

Motion carried. Voting aye: Carson, Marx, Chairman Browne. Voting no: Bunn.

Rep. Bunn asked what method would be used to make sure controversial matters are brought before the full committee. Sen. Browne suggested that each member make notes in his own notebook. Sen. Carson suggested the minutes show the tally on close votes. Mr. Paillette indicated the staff would make a list for the members.

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

Section 5. Operation of vehicles on approach of emergency vehicle or ambulance. Mrs. Embick explained that section 5 states the rules for right of way on the approach of an emergency vehicle or an ambulance and is modeled after UVC s 11-405 and the Hawaii Motor Vehicle Code.

Mr. Sipprell suggested that "immediate" in line 2 of subsection (1) be deleted. He also called attention to the provisions of UVC s 11-405. Subsection (2), stated Mr. Sipprell, could be improved by adding to the beginning of the first sentence, "Except on a divided highway where the center median consists of a concrete barrier or a raised curb and guard rail". If a driver in the left lane of a one-way roadway having three lanes could pull off onto the median strip, even if he had only four feet and is only part way off the roadway, it would be preferable to crossing two lanes on the right to get onto the

shoulder of the right side of the road when an emergency vehicle is passing, he said. This would not be a good idea if the median is a concrete barrier.

Sen. Carson stated his opinion that it would be preferable to have all traffic travel in the same direction with a flow to the right and with an emergency vehicle occupying the left lane.

Miss Howard suggested adding the following section to the end of subsection (2): "The provisions of subsection (2) do not apply on interstate highways." This would leave the provisions in subsection (1) applying on interstate highways, she said.

Chairman Browne stated that there could be a problem for a motorist in differentiating when he is on an interstate highway and when he is not.

Sen. Carson explained that because of the speed factor on freeways, the traffic should definitely move to the right to avoid an emergency vehicle.

The solution might be, said Mrs. Embick, to limit only to those streets which are not a part of the interstate highway system the choice of yielding the right of way by moving either to the left or to the right shoulder. She also stated her opinion that the provision, "and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer," which is from UVC s 11-405, should be included in both subsections (1) and (2).

Chairman Browne moved that section 5, subsection (1), be amended to add "and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer," after "intersection" in the last line.

Motion carried. Voting aye: Bunn, Carson, Chairman Browne.
Excused: Marx. This subsection was further amended. See below.

Mrs. Embick suggested including in the provision added to subsection (1) the words "or ambulance" and to make the same inclusion in subsection (2).

Chairman Browne moved that section 5, subsections (1) and (2) be amended to include "and shall stop and remain in such position until the authorized emergency vehicle or ambulance has passed, except when otherwise directed by a police officer," after "intersection" in the last line.

There being no objections, the amendment was adopted.

Rep. Bunn moved to delete "immediate" from section 5, subsection (1), line 2 of the draft.

There were no objections to the motion, and it was so ordered.

Sgt. Dean suggested that a driver not be given the option of moving to the right or left to give right of way to an emergency vehicle or ambulance because, in his opinion, the instinct of a driver is to move to the right. His suggestion was to leave subsection (2) as it is. Sen. Carson stated that the best solution might be to conform to uniformity and more closely parallel the UVC.

Sen. Carson moved to delete subsection (2) of section 5 and renumber subsections (3) and (4).

Motion carried. Voting aye: Bunn, Carson, Chairman Browne. Excused: Marx.

Section 6. Highway construction and maintenance. Mrs. Embick explained that section 6 contains the rules pertaining to right of way when there is highway construction or maintenance and when there is an authorized vehicle engaged in work upon a highway.

In answer to a question by Sen. Carson as to what is an authorized vehicle, Mrs. Embick replied that it would be a vehicle authorized by state or local authority or the Department of Transportation. She pointed out that this would not conform to the UVC.

Rep. Bunn asked if the language "as authorized by local or state government" was to be used, how would this affect other vehicles such as construction company vehicles? Mrs. Embick replied that the question being dealt with is who would have the right of way, and that there would be appropriate provisions in the equipment section of the code to deal with construction company vehicles.

Sen. Carson explained that a vehicle engaged in construction work could be blocking a roadway in such a manner that it would create a dangerous situation. Chairman Browne asked if there would be a section requiring sufficient warning signals to inform motorists of construction work. Mrs. Embick replied that perhaps what is needed is a provision to require adequate warning signals that would have nothing to do with right of way and this could be included under equipment and lights. Chairman Browne suggested that a statement be included in the Commentary to mention that adequate warning signals are needed. This would be helpful, she said, for future reference.

Mr. Paillette said that perhaps the subcommittee could consider the subsection at a later date. The UVC, he said, defines "authorized emergency vehicle" but does not define "authorized vehicle."

Mr. Sipprell suggested changing section 6, subsection (1) (a), to read, "To vehicle or pedestrian authorized by the State of Oregon or a local authority actually engaged in work upon a highway" In line 2 of subsection (1) (a) the word "area" would be deleted and "project" substituted. He proposed to retain subsection (1) (b).

Sen. Carson pointed out that there could be a question as to whether the section would apply at all to persons and vehicles not engaged in paving a highway. Subsection (1) (a), he stated, is very clear with the use of the words, "construction and maintenance." Subsection (1) (b), he continued, is not as clear because of the words "engaged in work upon a highway." He mentioned that perhaps an authorized vehicle should be required to be authorized by either state or local government and then require the use of adequate signals such as flashing lights. This would include private company vehicles. Mr. Sipprell advised that a private company, such as a utility, is required to secure a permit from the Highway Division to work on a roadway.

Mr. Paillette asked if vehicles for which permits have been acquired are required to use flashing lights or some sort of signal to give notice to motorists. Mr. Sipprell replied that he didn't believe so. Mr. Paillette added that the UVC approach deals with an offense for which someone may be charged. It would seem, he said, that when a vehicle is authorized by the Highway Division to be on the roadway, there should be some requirement for adequate signals to warn motorists.

Sen. Carson said that if the language is broadened to include work on a highway and if a vehicle is authorized by the proper jurisdiction and signal requirements are met, then it would be legal to work on a highway. Rep. Bunn agreed that approach would solve one problem but it would create a new one -- a whole new system of permits and a funding problem. Mr. George added that a permit wouldn't be needed. Authorization would be required and that could be acquired by letter.

Sen. Carson, after further discussion, suggested that subsection (1) (b) be deleted and the following language substituted: "To authorized vehicle or pedestrian actually engaged in work upon a highway within a highway construction or maintenance project when notice thereof is posted by the placing of official traffic control devices when such vehicle displays flashing lights meeting the requirements of subsection (1) (b)." It should include, he said, from whom authorization would be acquired. His intent was to include private company vehicles such as lumber trucks and telephone company trucks.

Mrs. Embick stated that the section relates to right of way and doesn't require putting up signs. The equipment sections, she said, will set out what the signs and lights should be.

The Chairman asked Mrs. Embick to rewrite section 6 of the draft on Right of Way.

Right of way at merging lanes of arterial highway. (Proposed amendment). Mrs. Embick explained that the proposed section, a copy of which is attached as Appendix C, is in the present Oregon Code and gives the right of way in the circumstance of a freeway with a merging or acceleration lane to the driver who is on the freeway. It does not change existing law but by setting out in the statute who has the right of way, it would eliminate posting signs at intersections. Chairman Browne commented that the driver on the freeway has a much clearer view than the driver approaching in the acceleration lane. It would be easier for the driver on the freeway, she said, to either slow down or move to the left.

Rep. Bunn moved the adoption of the proposed amendments (Appendix C) and that they be placed in the appropriate place in the draft with the proper section number.

Motion carried. Voting aye: Bunn, Marx, Chairman Browne.
Excused: Carson.

Flashing Signs, Signals and Markings; Preliminary Draft No. 1

Section 5. ORS 483.136. Flashing signals. Mrs. Embick explained that section 5 had been rewritten. A copy of the amended section is attached as Appendix D. Mr. George expressed approval of the revised section.

Rep. Marx moved adoption of section 5 as amended.
(Appendix D.)

Motion carried. Voting aye: Bunn, Marx, Chairman Browne.
Excused: Carson.

Pedestrians' Rights and Duties - Reference Paper

UVC s 11-501. Pedestrian obedience to traffic-control devices and traffic regulations. Mrs. Embick explained the new format being used in the reference paper on Pedestrians' Rights and Duties. Chairman Browne indicated that the subcommittee would adopt or reject sections of the UVC and those sections that were adopted would be rewritten in the form used in Oregon law.

Sen. Carson referred to the phrase, "unless otherwise directed by a police officer," in subsection (a) and expressed concern that it would create a conflict since that language had been removed from the previous Article on Right of Way. It was his opinion that it would be preferable for a policeman to have the authority to override lights and signs.

Rep. Marx said there is provision for a driver to follow the directions of a police officer, but he didn't know of another section that dealt directly with pedestrians. Mrs. Embick agreed and explained that since section 1 of Traffic Signs and Signals, which is strictly related to drivers, uses the phrase, "except when otherwise directed by a police officer," it would be appropriate to retain that exception in the parallel language of s 11-501 relating to pedestrians.

Mr. Sipprell was in favor of retaining the exception.

Sen. Carson moved the adoption of UVC s 11-501.

Motion carried. Voting aye: Carson, Marx, Chairman Browne.
Excused: Bunn.

UVC s 11-502. Pedestrians' right of way in crosswalks. Mrs. Embick pointed out that s 11-502 parallels ORS 483.210 with some differences. Comparing subsection (a) of s 11-502 to subsection (1) of ORS 483.210, the Oregon provision requires a driver to stop for a pedestrian in a crosswalk while the UVC stipulates that the driver stop or yield only if necessary under certain circumstances. Subsection (b) of the UVC section is parallel to the second clause of ORS 483.210 (1) and further limits the pedestrian's rights.

Sen. Carson asked whether the subcommittee should yield further to the pedestrian and do away with the language requiring a driver to decide whether a pedestrian is in his half of the roadway or so close as to be in danger. When a pedestrian is in a crosswalk, perhaps it would be best for all traffic to stop, he said. He agreed with Chairman Browne that a vehicle should stop at a crosswalk simply because another vehicle has stopped, even though the driver in the moving vehicle cannot see the pedestrian.

Chairman Browne asked Sen. Carson if he believed all traffic going in the same direction should stop for a pedestrian or if all traffic going in both directions should stop. Sen. Carson replied that he would prefer to see all lanes of traffic stop.

Mr. George also favored requiring all lanes of traffic to stop. Miss Howard expressed the opinion that it was an extremely dangerous practice to allow other vehicles to continue through the crosswalk when another vehicle had stopped for a pedestrian.

Rep. Marx explained that requiring all lanes of traffic to stop during a rush hour, such as 5:00 p.m. in Salem, would impede traffic.

Mr. Dutoit added that if all traffic is required to stop at crosswalks, perhaps pedestrians would all go to the crosswalks and the problem of congested intersections during a rush hour would subside.

Sen. Carson moved that all traffic be required to stop when a pedestrian is in a marked crosswalk unless there is an island for the refuge of the pedestrian.

Motion carried. Voting aye: Bunn, Carson, Chairman Browne.
Voting no: Marx.

Sen. Carson moved adoption of UVC s 11-502, paragraph (b).

Motion carried. Voting aye: Carson, Marx, Chairman Browne.
Voting no: Bunn.

Subsection (c) of UVC s 11-502, explained Mrs. Embick, states that if there is a pedestrian underpass or an overhead pedestrian crossing, the pedestrian does not then have a right of way while crossing in a crosswalk. ORS 483.210 (2) does not strictly relate to a pedestrian crossing where there is a crosswalk. Subsection (c) of s 11-502 states that even when there is a crosswalk, the pedestrian's right to use it does not apply when there is a pedestrian underpass or overpass.

Sen. Carson moved the adoption of paragraph (c) of UVC s 11-502.

Motion carried. Voting aye: Bunn, Carson, Chairman Browne.
Voting no: Marx.

Mrs. Embick reported that subsection (d) of s 11-502 parallels ORS 483.210 (3). The Oregon provision states that when a vehicle has stopped at an unmarked crosswalk or intersection to permit a pedestrian to cross, the driver of any other vehicle approaching from the rear shall not cause or allow the front end of his vehicle to pass beyond the front end of the stopped vehicle. The UVC states that the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

Mrs. Embick explained that by statutory definition, "marked" and "unmarked" are not necessarily terms defining a pedestrian's rights. A pedestrian at an intersection where there is a crosswalk, even though it isn't marked, has the right of way because a crosswalk exists without markings. Under s 11-502 when a vehicle is stopped at a crosswalk to allow pedestrians to pass, all other vehicles approaching from the rear must stop.

Rep. Marx moved the adoption of UVC s 11-502, subsection (d).

The motion carried unanimously.

In answer to a question by Chairman Browne, Mrs. Embick said that the remaining subsections of ORS 483.210 would be covered later.

UVC s 11-503. Crossing at other than crosswalks. Mrs. Embick explained that paragraph (b) of UVC s 11-503 differs from what has been previously adopted in that it stipulates the pedestrian shall yield the right of way to all vehicles and doesn't confine it to crossing at a crosswalk. If he crosses at a roadway where there is a pedestrian tunnel or overhead pedestrian crossing, he shall yield the right of way to all vehicles and it doesn't stipulate that he has lost his right of way where there is a marked crosswalk. Paragraph (c) of s 11-502 states that a pedestrian loses his right of way in a crosswalk when there is an overhead pedestrian crossing or a pedestrian tunnel.

Chairman Browne suggested that when paragraphs are added to give local areas authority to provide markings, the requirement should be made that adequate markings be posted to warn a pedestrian that he is to use the overpass or tunnel and if he does not, he will not have the right of way in the intersection.

The members were in agreement that a crosswalk, whether marked or unmarked, could be a source of confusion to a pedestrian when an alternate crossing for pedestrians exists.

Mrs. Embick explained that paragraphs (c) and (d) have no counterpart in Oregon law. Paragraph (c), she said, provides that when there are traffic control signals between adjacent intersections and they are in operation, a pedestrian shall not cross at any place except in the marked crosswalk. Paragraph (d) prohibits pedestrians from crossing diagonally at intersections. Mr. George suggested that paragraph (d) be deleted. It had been tried several places in Oregon, he said, and the practice had been discontinued.

Rep. Bunn moved the adoption of UVC s 11-503, paragraphs (a), (b) and (c).

The motion was unanimously adopted.

UVC s 11-504. Drivers to exercise due care. Mrs. Embick explained that s 11-504 states that every driver shall exercise due care to avoid colliding with a pedestrian. ORS 483.210 (5) was somewhat similar and requires a driver to exercise reasonable control to avoid colliding with any object.

Sen. Carson pointed out that the language in s 11-504, "and shall exercise proper precaution upon observing any child or any obviously confused, incapacitated or intoxicated person," would be impractical.

Chairman Browne explained that when a decision is made by the members on a particular section or paragraph, the decision is a matter of policy as to whether the contents of the section are adopted. It would not necessarily signify approval of the language.

The members discussed what might constitute "due care" when approaching a pedestrian and whether a section providing drivers to exercise due care would be an educational tool.

Chairman Browne moved to retain ORS 483.210 (5).

The motion carried unanimously.

Mr. Paillette explained that ORS 483.345 had been a part of the basic rule and was made a separate statute in 1971. After considerable discussion of the section, the consensus was that it was not needed.

Sen. Carson moved the deletion of ORS 483.345.

The motion carried unanimously.

UVC s 11-505. Pedestrians to use right half of crosswalks. Mrs. Embick explained that UVC s 11-505 and ORS 483.216 contained the same provision. If the section is adopted by the subcommittee, it would be redrawn so that "violation of" would be phrased with a culpability subsection.

Rep. Marx moved to repeal ORS 483.216 and adopt UVC s 11-505.

The motion was unanimously adopted.

UVC s 11-506. Pedestrians on highways. Mrs. Embick pointed out that there is no counterpart in Oregon law for paragraphs (a), (b) and (d) of UVC s 11-506. The only provision in Oregon law is strictly limited to a highway outside an incorporated city where pedestrians on a highway outside an incorporated city were required to use the left-hand side of the highway.

Sen. Carson suggested inserting the ORS section number after "in" in line 1 of paragraph (d).

Mr. Paillette proposed to incorporate "off the road" into paragraph (c).

Mrs. Embick related that without these UVC provisions, there had been some strange decisions by the Supreme Court. A pedestrian could be on the right side of the road, off the shoulder, get hit by a vehicle from behind, and the pedestrian would be at fault. However, when a pedestrian is walking on the left side edge of a roadway, he has the right of way.

Miss Howard urged that the Oregon statute be more clearly defined in this area so that it would be more readily understood by both pedestrian and driver.

Rep. Marx' main objection was to paragraph (a).

Sen. Carson moved the adoption of UVC s 11-506 with the inclusion of the suggested language.

Motion carried. Voting aye: Bunn, Carson, Chairman Browne.
Voting no: Marx.

Next Meeting

The members discussed the possibility of a meeting of the full committee on April 9 and 10.

March 22, 1974, at 10:00 a.m. was set as the next meeting date of the Subcommittee on Revision.

The meeting was adjourned at 4:30 p.m.

Respectfully submitted,

Anna M. McNeil, Clerk
Committee on Judiciary

HOUSE MEMBERS:
GEORGE F. COLE
CHAIRMAN
STAN BUNN
LEWIS HAMPTON
ROBERT MARK
NORMA PAULUS
TELEPHONE
378-6791



Appendix A
Minutes, March 11,
1974

SENATE MEMBERS:
ELIZABETH W. BROWNE
CHAIRMAN
JOHN D. BURNS
WALLACE CARSON, JR.
GEORGE EIVERS
DONALD L. PAILLETTE
COUNSEL

COMMITTEE ON JUDICIARY

ROOM 14, STATE CAPITOL
SALEM, OREGON 97310

February 20, 1974

M E M O

TO: Members of Subcommittee on Revision
FROM: Marion B. Embick
SUBJECT: Proposed amendment to section 2 of Speed Restrictions re:

- Alleys: (1) Definition
(2) Designation of maximum speed

Definition of "alley" in UVC s 1-102:

§ 1-102—Alley.—A street or highway intended to provide access to the rear or side of lots or buildings in urban districts and not intended for the purpose of through vehicular traffic.
(NEW, 1968.)

Section 2. (Maximum speeds.) Add subsection to read:

() Fifteen miles per hour when driving on an alley.

Analysis:

The definition of alley was added to the UVC in 1968 to clarify right of way situations at places where alleys intersect with other streets and to avoid creation of an intersection at such alleys within the definition of intersection.

With no designated maximum speed for alleys, the speed allowable depends on the location of the alley in a business or in a residential district unless the State Speed Control Board sets a designated speed on a case by case basis.

There is no designated maximum speed for alleys in the UVC. In most jurisdictions local authorities may set the speed of alleys within the authority's physical boundaries.

COMMITTEE ON JUDICIARY
Room 14, State Capitol
Salem, Oregon

PROPOSED AMENDMENTS TO SECTION 3

RIGHT OF WAY
Preliminary Draft No. 1

Section 3. (Stop signs and yield signs.)

(4) An official traffic control device placed pursuant to subsection (1) of this section shall conform to specifications approved by the Department of Transportation, and shall be illuminated at night or so placed as to be illuminated by the headlights of approaching vehicles or by street lights.

COMMENTARY

This subsection does not have a UVC counterpart.
It is verbatim the same as subsection (4) of ORS 483.204.

COMMITTEE ON JUDICIARY
Room 14, State Capitol
Salem, Oregon

PROPOSED AMENDMENTS TO
RIGHT OF WAY
Preliminary Draft No. 1

Section _____. (Right of way at merging lanes of arterial highway.) (1) A driver entering a freeway or other arterial highway where an acceleration or merging lane is provided for his use shall look out for and give right of way to vehicles on the freeway or other arterial highway.

(2) A driver entering a freeway or other arterial highway who fails to yield the right of way as provided in subsection (1) of this section commits a _____.

COMMENTARY

A. Summary

Subsection (1) provides that the driver entering a freeway or other arterial highway on an acceleration or merging lane must yield the right of way to vehicles on the highway.

Subsection (2) classifies the offense.

B. Derivation

This section is a restatement of subsection (1) of ORS 483.202.

C. Relationship to Existing Law

ORS 483.202 would be repealed and the provisions of subsection (1) contained in this section.

COMMITTEE ON JUDICIARY
Room 14, State Capitol
Salem, Oregon

PROPOSED AMENDMENTS TO
TRAFFIC SIGNS, SIGNALS AND MARKINGS
Preliminary Draft No. 1

Section 5. (Flashing signals.) (1) When a driver approaches a flashing red light used in a traffic signal or with a traffic sign, he 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 at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. The right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

(2) When a driver approaches a flashing yellow light used in a traffic signal or with a traffic sign, he may proceed through the intersection or past the signal only with caution.

(3) This section shall not apply at railroad grade crossings. Conduct of a driver approaching a railroad grade crossing is governed by sections ____ to ____ of this chapter.

(4) A driver who fails to obey a flashing red or yellow signal commits a _____.

COMMENTARY

A. Summary

Subsection (1) provides that a driver approaching a flashing red light used with a traffic signal must stop.

The line at which the driver stops is established in the terms of the prior sections.

Subsection (2) provides that a driver approaching a flashing yellow signal may proceed only with caution.

Subsection (3) states that these rules do not apply to railroad grade crossings.

Subsection (4) classifies the violation of this section.

B. Derivation

This section is based on UVC s 11-204.

C. Relationship to Existing Law

ORS 483.136, which would be repealed, is identical to UVC s 11-204 as it appeared in the 1934 Code. The introductory paragraph of the UVC section, through amendments in 1948 and 1971, was changed from a general reference to flashing red and yellow signals, to illuminated signals used in a traffic signal or with a traffic sign. Since these signals are often not within the boundaries of a sign, this draft section uses the UVC wording to cover both types of flashing light traffic signals.

The rule of subsection (2) of this draft section that a driver proceed through an intersection where there is a flashing yellow light has been held to mean that a driver must stop at this signal when not to do so might endanger the safety of others. Lehr v. Gresham Berry Growers et al, 231 Or 202, 208, 372 P2d 488 (1962).

Subsection (3) states that these rules do not apply to railroad grade crossings.