Tape 19 - Side 1 - 795 to end
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COMMITTEE ON JUDICIARY

Subcommittee on Revision

August 19, 1974

Minutes

Members Present: Senator Elizabeth W. Browne, Chairman
Representative Stan Bunn
Senator Wallace P. Carson (Morning session)
Representative Robert Marx

Staff Present: Mr. Donald L. Paillette, Project Director

Others Present: Mr. Gil Bellamy, Administrator, Traffic Safety Commission
Captain Larry Brown, Portland Police Bureau
Mr. L. E. George, Traffic Engineer, Highway Division
Mr. Ralph Sipprell, Liaison Engineer, Highway Division
Capt. John Williams, Traffic Division, Oregon Department of State Police

Agenda: TURNING AND MOVING; SIGNALS ON STOPPING AND TURNING; Preliminary Draft No. 1; April 1974 (section 5)

GENERAL PROVISIONS; Preliminary Draft No. 3; November 1973 (section 1)

POWERS OF STATE AND LOCAL AUTHORITIES; Preliminary Draft No. 2; August 1974 (ss 1 and alternate s 1, 3, 4, 5, 16)

SPECIAL RULES FOR MOTORCYCLES; Preliminary Draft No. 1; August 1974 (UVC s 11-1305 (b)

GENERAL PROVISIONS; Definitions; Reference Paper; August 1974

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

Approval of Minutes of Meeting of July 2, 1974

There being no objection, the minutes of the meeting of the Subcommittee on Revision on July 2, 1974, were approved as submitted.

TURNING AND MOVING; SIGNALS ON STOPPING AND TURNING; Preliminary Draft No. 1; April 1974

Section 5. Signals by hand and arm or by signal lamps. The proposed section, a copy attached to these minutes as Appendix A, had been discussed by the full committee on June 13, 1974 and final action had been deferred at that time, Mr. Paillette explained. The effect of the amendment would prohibit antique vehicles from driving at night without a signal lamp and also would contain a change in the distance requirement of paragraph (a), subsection (2) from 500 feet to 1,000 feet, which is provided in UVC s 12-201.

Capt. Williams reported the distance requirement in subparagraph (A) of subsection (2) would relate to a sight distance. If it is greater than 24 inches, a person's arm would not be visible and the signal requirement would come into effect.

Capt. Williams noted that recently the Motor Vehicles Division has adopted federal standards dealing with equipment on vehicles. The Division is currently examining those standards, picking out those which are applicable and will change existing Oregon law. The federal standards would supersede Oregon law in any of these changes, one of which requires two tail lamps on vehicles manufactured after 1966. He was uncertain whether or not the turn signal requirements were contained in those standards.

Mr. Paillette asked the number of vehicles which would be affected under the proposed section 5 and Ms. Howard indicated that a very few thousand would be involved as it is anticipated that a vehicle remains in service for 13 to 15 years. The 24 inch requirement in subparagraph (A) she believed would deal with a car pulling a trailer which extends far enough behind the vehicle so as to obstruct the hand signal, thereby requiring the signal lamp.

Mr. Paillette explained that in order for subsection (2) to apply, it would necessitate having both paragraphs (a) and (b). Subparagraphs (A) and (B) would apply to the type of vehicle being driven. The driver can use a lamp or arm signal if he is driving in daylight hours. If the distance is greater than 24 inches, the driver does not have the option and must use the signal lamps. Mr. Paillette recommended clarifying the section by incorporating the provisions of subparagraphs (A) and (b) into paragraph (b). The Chairman suggested stating that subsection (1) applies to subparagraphs (A) and (B).

Representative Bunn stressed opposition to the section although he said he would cast an aye vote but only for the purpose of bringing it to the attention of the full committee.

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

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

GENERAL PROVISIONS; Preliminary Draft No. 3; November 1973

Section 1. Provisions of chapter to be applicable, uniform and controlling throughout state, including ocean shore. Mr. Paillette explained the section has been reinstated in the Article on Powers of State and Local Authorities.

POWERS OF STATE AND LOCAL AUTHORITIES; Preliminary Draft No. 2; August 1974

Section 1 and alternate section 1. Provisions uniform throughout state. Section 1 relates to a restriction that no local authority may enact or enforce any rule or regulation in conflict . . . . " The conflict approach is taken from existing law. Alternate section 1 provides that they shall not enact or enforce any ordinance on a matter covered by the provisions, the effect being that it would be a pre-emption, i.e., the state would occupy the field of motor vehicle legislation unless there was a specific grant of authority to the local authorities, Mr. Paillette explained.

In response to Representative Marx's question, Mr. Paillette reported that the local authorities now adopt the state vehicle code, with perhaps some variance in penalties. Representative Bunn asked if there was anything contained in existing law which prohibits a conflict between the state and local authorities and if the section makes it clear that conflict includes a difference in penalties. Mr. Paillette alluded to a letter received from Mr. Mattis endorsing section 1 for the reason that "development of the 'conflict' doctrine by the Oregon courts allows constructive local supplementation of traffic legislation which has often in the past proven to be the testing grounds before regulatory measures have been enacted into state law."

Ms. Howard stated that the Motor Vehicles Division receives reports from municipal court and there has been nothing to indicatethat other kinds of offenses are coming from city courts and that most have adopted the state definition. She was not aware of any particular problems existing, except perhaps ordinances relating to U-turns.

Representative Bunn moved the adoption of section 1, Powers of State and Local Authorities.

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

Section 3. Authority of Transportation Commission to mark highways and control traffic. The section provides that placement and maintenance responsibility for traffic control devices is under the joint jurisdiction of state and local authorities and contains a formula for payment of placement and maintenance costs.

Mr. George referred to the last sentence in subsection (1) and questioned the mandatory provision by the placement of the word "shall." He was uncertain as to the legal implications which would be involved in certain instances and voiced his preference for a discretionary provision now contained in existing law.

Representative Marx posed the situation where a sign indicating a dangerous turn had been knocked down and before it had been replaced an accident had occurred which was a direct result of the sign not being there. He asked who would be held liable and was informed that the Division could be held liable in this instance.

Mr. George next referred to the first sentence of subsection (2) and commented that the vast majority of the local authorities do not have the personnel to make a determination that placement is necessary and in many instances rely on the state in helping make this determination. He asked if "determination" would mean a "request" in this situation. The Chairman noted that the Highway Department would have to make a finding that the recommendation was valid and would still have the final veto on the matter. Mr. George noted that the local authorities were required to submit their findings and recommendations and there were many instances where they knew something had to be done but uncertain as to what it should be. He wondered if they were equipped to write and furnish recommendations and findings. If the intent of the section is to allow them to make a request, he would be in agreement, but objected to requiring them to submit technical reports and a series of findings. The Chairman was of the opinion the term "findings" was not too complicated as the jurisdictions could merely indicate that a number of accidents occurred in a certain area and recommend a stop sign, for instance.

Representative Marx thought the last sentence of subsection (2) seemed to place the burden on the wrong party. Mr. George was bothered that it contained no provisions for recourse, and thought this should be covered. Representative Bunn suggested reversing the language to state that if there was no response from the administrator, the request shall be considered approved, to which Mr. George agreed. By making silence approval, the Chairman thoughta longer time period should be considered. There are times, such as the flood of 1964, Mr. George reported, where the Division could not have responded to the 65 day period and have the equipment replaced. The Chairman suggested using the 65 day limitation unless the administrator extended the period if an emergency were to exist.

Representative Marx asked if silence were to mean approval, the language would then place the responsibility on the Division to correct the situation and received an affirmative reply.

Senator Carson arrived at this point in the meeting.

Representative Bunn suggested inserting a 90 day period in lieu of the 65 days and add an emergency provision following the 90 days.

Senator Carson expressed the view that only a determination had to be made within the 65 days but that the construction was not required to take place within this time period. Mr. Paillette agreed and advised that there was no requirement in the section to erect the sign within the 65 days. The section relates only to whether the administrator approved or disapproved the findings.

Mr. George reported that in placing speed zone signs, the Division is required to publish this under the APA and he was concerned that the 65 day period might be too narrow for this to be done.

Chairman Browne asked if there was any objection to reversing the last sentence of subsection (2) to state that if the local authorities do not hear from the Division, it would be considered that the findings were approved and accepted by the Division. There being no objections, subsection (2) was amended to state that concept.

Representative Marx moved the time period be changed from 65 to 90 days in subsection (2).

There being no objection, the amendment was adopted.

The Chairman inquired as to the need for incorporating an emergency clause into the subsection and Mr. Paillette responded that it is difficult to define an emergency and would not recommend this approach.

Representative Bunn alluded to Mr. George's earlier concern with respect to the local authorities inability to technically describe findings and recommendations and asked if the administrator could bypass this requirement. Mr. George responded that this is actually what is being done at the present time and should not create any problems.

Mr. Sipprell referred to subsections (2), (3) and (4) and questioned the language which speaks to the state highway also under the jurisdiction of the local authority and county governing body. He wondered if it were appropriate to use the term "joint jurisdiction" when referring to a state highway. A state highway, he explained, is under the jurisdiction of the State Transportation Commission rather than under the joint jurisdiction of the state and local authority. If it were routed over a city street, the state would still have the responsibility for maintenance and jurisdiction from curb to curb. Mr. Sipprell was unaware of any instance where there would be a state highway under the joint jurisdiction. Mr. Paillette pointed out that the intent was to ascertain the apportionment of the costs which would be involved.

The members were in agreement that the language be clarified and state that the state highway was under the jurisdiction of the State Transportation Commission alone.

Senator Carson moved to delete "Apportion" in paragraph (a) of subsection (3) and insert "Assess".

There being no objection, the amendment was adopted.

Senator Carson moved to strike "the same" from the term "verbatim the same" reflected in the Commentary to this draft as well as in other drafts.

There being no objections, the amendment was adopted.

Senator Carson called attention to subsection (4) wherein the administrator shall apportion the amount of federal funds to payment of construction costs, and asked what apportionment was intended. The intent, Mr. Paillette replied, was to be 50-50 and he agreed that the draft should be clarified in this instance.

Mr. George called attention to paragraph (b) of subsection (3) and commented that testimony had been previously presented to show that the Highway Division had developed a policy agreement in 1971 between the League of Oregon Cities and Association of Oregon Counties whereby the state pays 100% of the maintenance costs for cities of 50,000 and below. The proposed paragraph would, in effect, eliminate this agreement and penalize the majority of the cities. Subsection (1) places the responsibility on the Transportation Commission to construct and maintain traffic control devices upon state highways, and Mr. George commented that this would include everything which is considered a traffic control device, which includes such as stop signs, stencils, etc., and for which they pay 100% of the costs. Paragraph (b) would now assess 50% of these costs to the cities. He continued that the Commission reviews yearly the maintenance costs for Portland, Salem and Eugene and expends 50% of those costs. With respect to cities below 50,000, the Commission pays for 75% of the installation costs and 100% of the maintenance.

Senator Carson voiced objection over the cities of 50,000 population being assessed 50% of the maintenance costs. Mr. George commented that the Commission presently pays $800,000 to $900,000 yearly for these traffic signal maintenance costs alone. If the Commission were to include Portland, Salem and Eugene, as suggested by Senator Carson, the costs would rise to approximately $1,300,000. At one time, he explained, these cities were paying 100% of the costs and had been agreeable to the 50-50 arrangement. He did agree, however, with Senator Carson's assertion that in actuality, the taxpayers in the larger cities are subsidizing those smaller cities. Senator Carson suggested receiving the reaction of the Transportation Commission and the three cities involved by outlining in the draft the requirement that the Commission shall pay all maintenance costs.

Senator Carson moved to amend paragraph (b), subsection (3), to require the state to pay the maintenance costs to the local authorities.

The intent of his amendment, he explained, is to include the three larger cities in the full maintenance cost program offered by the state. Senator Carson remarked that if the members did not desire to specifically require that it must provide such maintenance, the alternative could be to delete paragraph (b) in its entirety.

Mr. George again reiterated his concern that paragraph (b) would include all devices and by including cities over 50,000, the costs would arise to over $1 million.

Senator Carson withdrew his motion to amend paragraph (b), subsection (3).

Representative Bunn moved to delete paragraph (b), subsection (3).

Motion carried unanimously.

Mr. George asked what the effect would be on paragraph (a) by the deletion of paragraph (b) and was informed that the paragraph would be reworded and relate to the initial placement costs.

Representative Marx moved the adoption of section 3, as amended.

Motion carried unanimously.

Section 4. Authority of Public Utility Commissioner over railroad-highway crossings. Senator Carson remarked that after discussions held with various representatives relating to the section, he would urge the retention of existing law which has worked well with the federal program.

Representative Bunn moved to delete section 4 and retain ORS 483.040.

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

Section 5. Control of traffic control devices by local authorities. Mr. Paillette reported the section was amended to include a grandfather clause with respect to the local authorities being required to conform to state standards as stated in subsection (4).

Senator Carson proposed that "commissioner" in line 2 of subsection (5) be changed to "commission."

Senator Carson moved the adoption of section 5.

Mr. George reported that the section contains several areas which set impossible tasks to be performed by the Commission, some of which

he was uncertain were desired by the cities. Under subsection (2), he assumed that "general supervision" meant that the state must set the standards and believed the cities would consider this undesirable, as the state would be directing them, by standards, how often they were required to replace stop signs, repaint the streets, crosswalks, etc. The entire area of maintenance standards is vague, he said, and he did not think a proper set of maintenance standards has ever been established.

Senator Carson moved to delete references to "maintenance" in subsections (2), (4) and (5).

Motion carried unanimously.

Vote was taken on Senator Carson's motion to adopt section 5, as amended.

Motion carried unanimously.

The subcommittee recessed for lunch, reconvening at 1:30. Present for the afternoon's meeting were Bunn, Marx, Chairman Browne.

Section 15. ORS 484.030. Jurisdiction of courts. Mr. Paillette reported that the new language in subsection (3) gives the city attorney the authority to prosecute state traffic offenses in city court. The Chairman suggested the language be clarified to show that there is jurisdiction for the city to prosecute but the presence of the city attorney is not required unless requested by the judge.

Mr. Paillette explained that when the city attorney prosecutes, he is doing so under city ordinance and not state statute, even though the ordinance is often the same as state law. Under existing law, the city attorney cannot prosecute a state offense in city court. Representative Marx asked if the section would include only the cities, inasmuch as the counties now have ordinance making powers and Mr. Paillette reported that the counties do not adopt the state vehicle code and would be going into district or justice court and the prosecution would be done either by the district attorney or county counsel.

Representative Bunn inquired as to the possibility of the counties having their own traffic violations as the cities have and Mr. Paillette noted that the counties prosecute county ordinances such as dog control, littering, etc. Representative Bunn asked what the effect would be if the counties started passing traffic legislation. Mr. Paillette was uncertain if the statutes preclude the counties from enacting these ordinances. The case could be such that because this authority was not specifically given to the counties, they do not have it, he said, but that he would examine the statutes to determine whether there is any need to prohibit some of the powers.

The Chairman advised that the policy question was whether the committee would wish to have violations of state traffic offenses

prosecuted in city courts.

Representative Marx asked what traffic offenses would be included and was informed by Paillette that it would comprise everything in the traffic code. It would apply to driving with a .15 which would be a violation of the ordinance. If convicted in state court, it would be a crime. Under existing law, by operation of the Criminal Code, he continued, even if it were a city ordinance it would be considered a crime and carry a penal sanction and the effect of the conviction is the same as being convicted by a state court under state law.

Representative Bunn asked if, under the draft a state police officer gave a ticket in Newberg, for example, it would go into district rather than municipal court. Mr. Paillette responded it would still go into the same court. The purpose of the section is to avoid the necessity of taking the state traffic code and adopting it on a blanket adoption and making everything subject to the jurisdictional limits of the courts. Representative Bunn next asked if there were any difference if a city or state police officer gave the citation and was informed that the driver would not go into city court if given a citation by a state police officer, inasmuch as he would be cited under state law. In this case, the city could not prosecute in the name of the state. There could be a variation in the amount of the fine, Mr. Paillette continued, and it could happen that the city fine might be greater than that of the state and the question would arise as to whether there might be a conflict in this matter, although this has never been litigated. Representative Bunn wondered if this would likely cause more uniformity in penalties and received an affirmative answer.

In response to the Chairman's question regarding the provision on the district attorney's appearance in traffic infraction cases, Mr. Paillette stated that the section could state that, with respect to traffic infractions, the city attorney shall appear only as required and include a cross reference to the Classes of Offenses' draft section that the district attorney would not be required to appear when it relates to a traffic infraction unless required by the judge.

There being no objection, section 15 was adopted.

Mr. George referred to section 12 of the draft and stated that when subsection (3) had been discussed at an earlier meeting, it had been determined that the local authorities, as well as the Transportation Commission, should determine that the highway is of sufficient width to permit angle parking.

> The Chair moved to amend subsection (3), section 12, to insert "or the local authorities" following "Transportation Commission".

There being no objection, the amendment was adopted.

SPECIAL RULES FOR MOTORCYCLES; Preliminary Draft No. 1; August 1974

UVC s 11-1305 (b). Handlebar height. Mr. Paillette reported that Mrs. Embick had contacted the California Department of Motor Vehicles in an attempt to secure data regarding its provisions on handlebar height. California had provided an analysis of section 27801 b of its vehicle code as well as an analysis prepared by the California Highway Patrol. The original bill contained a requirement that the handlebars were not higher than 15 inches above the seat and was amended in 1973 to prohibit the handlebars from being at or above shoulder height of the rider. Mr. Paillette noted that at the subcommittee's previous meeting it had been discussed whether Oregon should have a similar restriction on the handlebar height. A letter had been received by Capt. Williams wherein it was reported that the California Highway Patrol has had no enforcement problems since this amendment. The UVC section was brought before the subcommittee to determine whether or not the restriction should be adopted and if so, it would be included as another section in the draft, Mr. Paillette advised.

Representative Bunn stated that he would support this concept if there was evidence of a serious traffic safety hazard, but with no statistics offered by California, he would not support the restriction as he felt the legislation would be based on prejudice rather than safety. Mr. Paillette thought the original law was proposed because placing the arms in a raised position above the shoulder would restrict the side view of the rider. Capt. Williams reported that 36 states had adopted the 15 inch rule or some standard of controlling the height.

Capt. Brown addressed the subject and expressed concern over the handlebars obstructing the side view. With respect to statistics being unavailable, he reported that when an accident occurs at an intersection, the report shows the cause as failure to yield, no stop, or some other violation. The fact that the rider was blinded by an arm does not appear on the accident report. He expressed the view that by using the term, "above the shoulders" an enforcement problem would arise inasmuch as a person could sit in such a manner that his arms could be at different heights, making it difficult to prove. For visibility purposes, he said he strongly favored the 15 inch rule.

Representative Bunn suggested contacting the motorcycle groups for their written comments concerning the safety factors. Chairman Browne recalled she had requested the section to be mailed to the motorcycle vendors and thought they should have responded before this time. Capt. Brown advised that he was in touch with several cycle groups and would attempt to secure some input on the subject.

Representative Bunn, in answer to the Chairman's question if he would be agreeable to vote for the proposal, with the understanding that he personally opposed it, in order for it to be considered by the full committee, said he did not believe there was enough support for the concept and would not wish to add his vote. Representative Marx stated that because of the previous discussion he also was

uncertain that a grave safety factor existed and that perhaps the need for limiting the height at the present time was unnecessary.

Mr. Paillette asked if "choppers" would be prohibited on the roads if the height were to be controlled. Capt. Brown responded that it would only involve adjusting the handlebars on these units. In view of this statement, Representative Bunn withdrew his objections to the proposed section.

> The Chair moved the adoption of subsection (b), UVC s 11-1305 and that the section be sent to the full committee without recommendation.

Mr. Paillette reported that the analysis submitted by the California Motor Vehicles Division relating to the 1973 amendment stated that "variations in riders' physical stature and type, size and kinds of motorcycles are all factors which make a specific handlebar height less advantageous than previously anticipated."

> The Chair withdrew the motion to adopt UVC s 11-1305 (b) and moved that subsection (b), s 27801, Californ Vehicle Code be sent to the full committee without recommendation.

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

Section 6. Protective headgear and eye device required. Mr. Paillette reported receiving a telephone call from Mr. Bergstrom of the Portland City Engineer's office relating to the exception stated in subsection (4). The exception, he said, was a restatement of existing law, ORS 483.443 (4), and was written into the statute for the purposes of exempting meter maids. UVC s 11-1306 (c) states that "the section shall not apply to persons riding within an enclosed cab or on a golf cart" and because of this it was not incorporated into the draft as it could imply that meter maids were required to wear helmets. Mr. Paillette had been informed by Mr. Bergstrom of a ruling from the city attorney's office, based of the belief that the meter maids exceed 15 mph at times, that they must wear helmets. Capt. Brown explained that the enforcement was implemented because, as existing law is written, the maids are required to wear helmets due to the fact the vehicles are designed to travel at more than 15 mph and that they were traveling 10 mph would be of no consequence. He expressed favor to the exemption and by using the enclosed cab concept he believed the matter would be covered. Mr. Paillette agreed that this approach would be more feasible than stating a mile per hour requirement.

> The Chair moved to amend section 6 to state that helmets are not required in an enclosed cab.

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

Chairman Browne further requested that Mrs. Embick contact the cities of Salem and Eugene to make certain this would include post office vehicles and golf carts and those other three wheeled vehicles which may be appropriate.

Ms. Howard reported the Motor Vehicles Division has authority to approve motorcycle headgear and follows the federal standards. The problem, she believed, was not with the equipment approval, but with establishments selling non-approved safety equipment. These businesses are inspected by the Division on a yearly basis and she noted that no complaints have been received within the last six months relating to the substandard equipment being sold. She continued that some helmets on the approved list at the federal level are somewhat inadequate and suggested that at the time the equipment section is considered, subsection (2) of section 7 be reconsidered. The MVD has under discussion another approach to the equipment standards by using the AAMBA certification requirements, she advised.

Capt. Brown was asked if any problems were occurring with respect to bicycles equipped with small motors and said that these have not, as yet, become a problem and that he was more concerned with the people-powered vehicles. These units run on three wheels with an enclosed or semi-enclosed cab, are pedeled by one or two persons riding inside and claim to operate up to 35 mph, and use a full traffic lane. If the committee were to address this subject, Capt. Brown suggested these units be restricted on any road where they would use a traffic lane as he believed them to be extremely inefficient as well as dangerous. He added that he would also desire to ban these vehicles in some areas where bicycles are allowed.

Ms. Howard indicated she had received letters from the manufacturers and distributors relative to the legal status of the Moped, and she felt that when the committee considers the bicycle rules it should give thought to defining these units. Michigan, she said, has defined them as a bicycle and during the 1973 session the bicyclists did not desire them to be defined as such inasmuch as this would allow them on bicycle trails with motors. Those promoting the Mopeds argue against defining them as a motorcycle as this would mean they must be equipped as such. Ms. Howard suggested the possibility of setting new rules for the Mopeds. Capt. Williams reported that Georgia allows only one motorcycle in a traffic lane rather than two abreast and a requirement was adopted that those on motorcycles must wear some type of footwear other than socks.

Ms. Howard indicated that the federal motorcycle standards allude to protective clothing, although the UVC does not. If this type of requirement were to be adopted, the Division would then have to establish standards for footwear, protective jackets, etc. Mr. Sipprell recalled that the original bill requiring the use of helmets also required protective clothing which was later deleted.

Mr. Paillette referred to subsection (3) of section 3, relating to depriving a motorcyclist of a traffic lane and asked if the language would cause any problems from the standpoint of enforcement. Capt. Brown reported that it would create problems when considering the Mopeds, as a driver will undoubtedly attempt to pass in the same lane. Capt. Williams indicated that problems with enforcement and education will occur throughout the draft. In some instances, he believed it better for the cyclist to get out of the way. Representative Bunn wondered if a problem would arise if the draft were changed to state that the cyclist must stay to the right-hand side of the lane and Capt. Brown replied that the cyclist attempts to stay as far from the right side as possible in order to avoid colliding with open doors of parked cars, for instance, and he would foresee more problems than what is written into the draft. Ms. Howard stated that the Motorcycle Safety Foundation recommends the cyclist be a short distance to the right or left of the center of the lane due to oil or other substances on the road.

GENERAL PROVISIONS; Definitions; Reference Paper; August 1974

Mr. Paillette explained that several definitions have been set out in the reference paper, some of which apply to vehicle equipment sections and which will not be considered at this time. Definitions have been taken from the UVC as well as existing law and are meant to apply throughout the code.

UVC s 1-102. Alley. There is no definition of "alley" in existing law. "Highway," as defined in ORS 483.010, excludes a privately owned alley. The Chairman recalled the discussions held relating to the supermarket and tavern parking lots and asked if it were necessary to include "alley" in this instance. Mr. Paillette thought it unnecessary. What is being considered, he said, is to either apply a general provision with the entire traffic code applying anywhere in the state or on private parking lots, or to have specific crimes or offenses apply to places other than on a public highway. The Chairman thought it should not apply on private property.

Ms. Howard referred to the limitation on speed in alleys reflected in the draft Article on Speed Restrictions and thought this might necessitate defining "alley."

Capt. Brown alluded to the discussion with respect to the private parking lots where the public is invited and asked if it is intended for all traffic regulations to apply in this instance and was informed that a determination had not yet been made. If this concept were to be adopted, he said, it would create a nightmare to the Department in the enforcement of such a provision. Traffic regulation on such would be a fulltime job and they could not do so effectively and he advocated that it be limited to drunk driving.

Mr. George referred to the UVC definition in line 2 and recommended that "side of lots or buildings" be changed to "sides of lots or

buildings." Capt. Brown observed that by using "sides" it would limit it to something that provides access to both sides as opposed to only one side.

The Chairman asked the definition of "street" or "highway" and was informed they are defined in UVC as "the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular traffic." Capt. Brown remarked that alleys in Portland are dedicated alleys, the same as a dedicated street and are publicly maintained, and this is generally true throughout the state.

Representative Bunn questioned the phrase "and not intended for the purpose of through vehicular traffic," and said some alleys are used for the purpose of through traffic in order to reach another block. Ms. Howard reported it would be a violation to drive from an alley and go across the street but that there is widespread violation in this instance. Representative Bunn said that under the UVC definition, he would wonder if it were an alley or a roadway. He spoke of alleys which do not have signing for right or left turns and Mr. Sipprell believed that where it was not controlled by signing, the driver would be able to proceed across the street. The problem arises, Capt. Brown commented, in what is meant by "through vehicular traffic,"of which there is no definition. Mr. Paillette remarked that the definition of "highway" would also fit the alley. Capt. Williams suggested placing a period after "districts" in the definition of "alley," thereby deleting the phrase "and not intended for the purpose of through vehicular traffic." Representative Bunn wondered if there could be highways which could fit this particular definition and which could then be considered alleys.

Capt. Brown indicated that the Portland area enforces the stopping at alleys by relying on the fact that it is a dedicated alley and Capt. Williams remarked that since this term has not been included in the code and no problems have arisen from its exclusion, it perhaps might be desirable to omit the definition.

Mr. Paillette believed that what was being attempted in the UVC definition was to clarify the rules on right of way where highways and alleys intersect. According to the UVC commentary, the rationale for the definition was with respect to pedestrians crossing at an intersection and they apparently did not wish to require them to cross only at a marked crosswalk.

It was the consensus of the members to omit the definition of "alley."

UVC s 1-103. Arterial street. There is no comparable term in existing law. The term is not used in any of the drafts and its inclusion is not necessary, Mr. Paillette advised.

UVC s 1-104; ORS 483.002 (1). Authorized emergency vehicle. Capt. Brown reported problems arising in areas related to the emergency vehicle and referred to "Apollo," an ambulance company which has recently started in business in Portland and which is not a part of the contractual arrangements the city of Portland and Multnomah County have made to supply emergency medical service. The company listens to the Code 3 police broadcasts and immediately respond and in doing so have nearly caused several accidents on their own while running Code 3, he said. Whereas the definition speaks to the ambulance "while being used for emergency purposes," Capt. Brown suggested that a provision be included to state who shall decide if it is an emergency. He would not argue as to whether an emergency does or does not exist but said he would argue their right to endanger all other personnel attempting to arrive at the scene by their use of sirens, etc., without anyone having prior knowledge of their intention. Capt. Brown favored a provision authorizing an agency to permit an emergency run before it is made.

Representative Marx commented that other parts of the state may not have contractual agreements such as Portland does, and that a private ambulance may come when it hears the police call and expressed disagreement to Capt. Brown's proposal.

ORS 483.002 (1) was retained.

UVC s 1-105; ORS 483.002 (5). Bicycle. The existing law definition was enacted in 1973. Capt. Williams reported that in 1973 several states included in the definition those with helper motors rated less than one brake horsepower. Ms. Howard indicated that the UVC is moving in the direction of implementing a section relating to motor-assisted bicycles. The Chairman observed that a minimum speed could be provided for the motor assisted units, such as Mopeds. Capt. Williams noted this was instituted in Texas by providing for a horsepower rating and with a 20 mph maximum.

UVC s 1-107; ORS 483.002 (3). Business district. The Oregon definition was retained.

Bus trailer. There is no comparable UVC provision. Capt. Williams reported the definition has not been used from an enforcement standpoint and Mr. Paillette recommended the Oregon definitions be retained.

UVC s 1-110; Controlled-access highway. Oregon has no comparable definition and Mr. Paillette reported the term has not been used in any of the drafts. Mr. Sipprell noted that Oregon does have controlled-access highways in Multnomah and Lane Counties and the term ties in with the section on parking in the Article on Powers of State and Local Authorities, where it speaks to "accesses restricted, controlled or prohibited . . . . "

There being no objection, UVC s 1-110 was adopted.

UVC s 1-111; ORS 483.006 (4). Crosswalk. Capt. Brown commented on the need for subsection (b) uf UVC s 1-111 saying that occasionally a street will go too far between intersections and a marked crosswalk must be provided between those intersections. Mr. Paillette noted that paragraph (b) of existing law continues to state that "Whenever marked crosswalks have been indicated, such crosswalks and no other shall be deemed lawful across such roadway at that intersection." Mr. George remarked that there are some instances where there are crosswalks but no sidewalks. Capt. Williams favored the retention of the Oregon definition.

Representative Marx referred to Leap v. Royce, 203 Or 566, 379 P2d 887 (1955), which states:

> "There is no unmarked crosswalk at an intersection unless there is a pedestrian walk on each of the opposite sides of the street."

He wondered if this should be overruled or whether the driver should not have the duty to watch where there is not a walkway. Capt. Brown mentioned that the people are allowed to walk alongside the road and unless this is prohibited, the pedestrian should have some type of right of way. Representative Bunn was of the opinion that if there is an intersection, the pedestrian should be protected whether it is a marked or unmarked crosswalk.

ORS 483.006 (4) was retained, amended to include an unmarked crosswalk at an intersection.

Mr. Sipprell referred to ORS 483.008 (1) and stated that since Highway has become a division of the Department of Transportation it is now referred to as the "Highway Division. He suggested examining the definitions to make certain the terms are correct. Ms. Howard called attention to the definition of "Department" in ORS 483.006 (3), and was of the opinion it should refer to ORS 483.008.

UVC s 1-114; ORS 483.008 (2) Driver. The question arose as to the meaning of "actual physical control." Ms. Howard believed it was added to the UVC in order to include the drunk driver sitting in the car, although Capt. Brown stated the courts have held that in this instance he is not driving. It was Capt. Williams' observation that it was added because of a person being in the driver's seat while his car was being towed. Representative Marx's interpretation of the term was that it could mean either that the person was driving or outside pushing the car and believed the UVC definition to be repetitive as it speaks to the person who drives or is in actual physical control.

Chairman Browne inquired as to why Oregon law excludes the chauffeur and Mr. Paillette responded it is defined in ORS 483.004.

He questioned the necessity for defining the chauffeur separately. Ms. Howard commented that in order to receive a chauffeur's license, the driver must pass additional written tests, as well as a standard driver's test if he has not had one within the past year. The MVD does not require them to drive in the type of vehicle they will be operating as do some states. The agency issues a combined chauffeur-driver license, renewed on the same basis as a regular license. A separate driving record must be maintained for convictions and accidents. Mr. Paillette asked if there were any equipment regulations which would be relevant to retaining the chauffeur provisions and was told by Ms. Howard that it could relate to equipment violations. Mr. Paillette noted that under the rules of the road, either under existing law or what has been drafted, everything would apply to a chauffeur as well as a driver.

Representative Marx moved to delete ", other than a chauffeur," in subsection (2), ORS 483.008.

There being no objection, the amendment was adopted.

Mr. Paillette advised that he would re-examine the statute to determine if there was any special intent for the insertion of the phrase in the existing definition.

UVC s 1-118; ORS 483.008 (3). Farm tractor. Capt. Williams suggested that Oregon law be retained because of related statutes dealing with farm tractors.

UVC s 1-122; ORS 483.010 (2), 481.020. Highway. The UVC contains the public maintenance provision, whereas the Oregon definition is based on usage by the public.

The Chairman questioned the hitchhiking situation and asked if they were allowed on the shoulder. Mr. Paillette explained that under the draft version the hitchhiker would be allowed on the shoulder. Under the UVC definition, Capt. Brown stated, if someone were on the shoulder of the road, he would be on the highway. It was Representative Bunn's understanding that the Article on Pedestrians' Rights and Duties prohibited hitchhikers on the roadway, which was a part of the highway, but allowed hitchhiking on the shoulder. Mr. Paillette advised that the draft adopted the UVC definition of "roadway," which excludes the shoulder, rather than "highway" which includes both shoulder and roadway. Neither UVC nor existing law has a definition of "shoulder."

Representative Marx alluded to the earlier discussion regarding parking lots and asked if it would apply to the highway definition. He referred to Capt. Brown's suggestion to make it a specific requirement under DUIL. Mr. Paillette reported that under the California approach only one offense has been picked out for this type situation.

The Michigan definition of "shoulder" is as follows:

> "Sec. 1-188. 'Shoulder' means that portion of the highway contiguous to the roadway for the accommodation of stopped vehicles, for emergency use and for lateral support of base and surface courses."

Mr. Paillette advised that the Michigan revision in 1970 proposed to include the term "whether paved or unpaved" following "highway" in the above definition.

With respect to the hitchhiker situation, Capt. Brown recommended that the hitchhiker be required to stand on the curb, if one exists. Mr. Paillette reported that "roadway" is defined as "That portion of the highway improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder . . . . " and Mr. Sipprell advised that the curb is not considered part of the roadway.

Mr. Paillette thought it advisable to adopt the UVC version of "highway" inasmuch as its definition of "roadway" had already been approved. Mr. Sipprell referred to the exception contained in subsection (2) of ORS 483.010, which covers roads constructed by the forest service and BLM for the hauling of oversized loads of logs. Although UVC refers to the highway as "publicly maintained," Mr. Sipprell said that these specific roads are maintained under a contractual arrangement which might imply that it is privately maintained.

> The Chair moved the adoption of UVC s 1-122, with the proviso that the exceptions referred to in ORS 483.010 (2) be examined as to whether they should be incorporated into the section.

Ms. Howard suggested that if these exceptions are incorporated, the statute numbers be deleted and Mr. Paillette indicated that those sections could be referred to by name instead of just by statute numbers.

Vote was taken on the Chair's motion to adopt UVC s 1-122.

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

UVC s 1-158; ORS 483.020 (4). Roadway. In view of the Attorney General's opinion with respect to the definition of "roadway," the Chairman thought it advisable to adopt UVC s 1-158 and the proposed Michigan "shoulder" definition.

Representative Marx moved the adoption of UVC s 1-158.

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

Michigan Vehicle Code s. 1-188. Shoulder.

Representative Bunn moved the adoption of the proposed revision of the Michigan Vehicle Code definition of "shoulder." The definition would include the phrase "whether paved or unpaved,".

Representative Marx questioned where the shoulder would begin and end if, for example, next to the fog line there was a narrow shoulder which was paved to the ditch. It was the consensus of those present that the intent of the definition was that it would begin on the outside of the fogline and that this intent be noted in the Commentary. In cases where a fog line did not exist, the shoulder would begin at the edge of the pavement.

Vote was taken on Representative Bunn's motion to adopt the proposed revision of Michigan Vehicle Code, s 1-188.

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

UVC s 1-126; ORS 483.012 (2). Intersection. The Oregon definition is the 1930 version of UVC. Subsection (c), UVC s 1-126 states: "The junction of an alley with a street or highway shall not constitute an intersection.", and would tie in with the earlier discussion of alleys. Inasmuch as the definition of "alley" had not been adopted, Mr. Paillette remarked that the UVC definition of "Intersection" could be adopted and the definition of "alley" left to the courts.

Representative Bunn moved to amend ORS 483.012 (2) to incorporate subsection (c), UVC s 1-126.

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

UVC s 1-130; ORS 481.025 (2), 483.012 (3). Local authorities. Mr. Paillette noted that it had been suggested by Mrs. Embick that the definition of "local authorities" be drawn to include authority both to enact and to administer traffic regulations. ORS 483.012 (3) speaks only to adopting local police regulations. It was Chairman Browne's interpretation of the statute that it would involve internal affairs of the department and not apply to adopting traffic regulations. Mr. Paillette reported that this applies throughout ORS ch 483 and believed that "local police regulations" would mean the police powers which are granted.

The Chair moved to amend ORS 483.012 (3) to insert "and administer" following "adopt" in line 3.

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

UVC s 1-135; ORS 483.014 (2). Motorcycle. Mr. Sipprell indicated that existing law could include a three-wheeled golf cart.

Representative Bunn moved the adoption of UVC s 1-135.

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

UVC s 1-134; ORS 483.014 (4). Motor vehicle. The Oregon definition is adequate, Mr. Paillette said, and ORS 483.014 (4) was retained.

UVC s 1-139. Official traffic-control devices; ORS 483.016 (1). Official traffic signs and signals. Mr. Paillette indicated the term, "official traffic control device" has been used throughout the Article on Traffic Signs, Signals and Markings and that it had been assumed, when considering that Article, that the UVC term would be adopted.

The Chair moved to retain ORS 483.016 (1), amended to substitute "Official traffic-control devices" for "Official traffic signs and signals".

There being no objection to the motion, the amendment was adopted.

UVC s 1-141. Park or parking. There is no comparable Oregon provision and Mr. Paillette recommended the adoption of the UVC definition.

Representative Marx moved the adoption of UVC s 1-141.

There being no objection, the motion was adopted.

UVC s 1-143. Pedestrian. There is no comparable Oregon provision. Mr. Paillette referred to a letter received from Insurance Commissioner Lester L. Rawls in which he suggested defining "pedestrian" as "one who is not occupying a motor vehicle." The members believed this would then include bicyclists, horseback riders, etc., and would be inappropriate.

The Chair moved the adoption of UVC s 1-143.

There being no objection, the motion was adopted.

UVC s 1-147; ORS 484.010 (7), 483.018 (3). Police officer. Mr. Paillette was of the opinion the existing law definitions were adequate and said that in the draft Article on Serious Offenses there is a narrower definition which will cover the same persons in the section on eluding a police officer, but incorporates a further provision requiring the officer to be operating a vehicle having an appropriate official marking.

UVC s 1-150. Railroad sign or signal; ORS 763.010 (4). Protective device. Mr. Paillette favored the retention of existing law which is comparable to the UVC definition.

UVC s 1-154; ORS 483.020 (1). Residence district. ORS 483.020 (1) was retained.

UVC s 1-156; ORS 483.020 (2). Right of way. Capt. Brown noted that the UVC definition states that the pedestrian or vehicle must "proceed in a lawful manner," which he believed to be desirable language. Mr. Paillette agreed and said the UVC also contains a totality of the circumstances provision which he felt was appropriate.

Representative Marx moved the adoption of UVC s 1-156.

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

UVC s 1-160; ORS 482.030 (2); 483.022 (1); 485.010 (4). School bus. Mr. Paillette expressed the view that Oregon law should be retained unless it was believed something might be lacking which could be corrected by UVC. The Chairman was of the opinion existing law covers more area.

Mr. Paillette alluded to a discussion at an earlier meeting relating to a definition for "school crosswalks" and asked the members' views as to whether or not it should be defined, and received a negative reply.

UVC s 1-164; ORS 483.024 (1). Sidewalk. The provisions are identical except that the UVC definition states "use by pedestrians" whereas the Oregon definition states "use of pedestrians."

UVC s 1-168. Stand or standing. Mr. Paillette recommended the adoption of UVC s 1-168.

Representative Marx moved the adoption of UVC s 1-168.

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

UVC s 1-178; ORS 483.028 (2). Traffic control signal. The Oregon definition was retained.

UVC s 1-184; ORS 483.030 (4). Vehicle. ORS 483.030 (4) was retained.

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

Respectfully submitted,

Norma Schnider, Clerk
Subcommittee on Revision

Appendix A
Minutes, August 19, 1974
Committee on Judiciary
Subcommittee on Revision

PROPOSED AMENDMENT TO

SECTION 5

TURNING, MOVING AND STOPPING
Preliminary Draft No.1

Section 5. (Signals by hand and arm or by signal lamps.) (1) Except as provided in subsection (2) of this section, a driver shall give a stop or turn signal by activating signal lamps as described in section 6 of this Article.

(2) Notwithstanding subsection (1) of this section, a driver shall give a stop or turn signal either by means of signal lamps or by means of the hand and arm if:

(a) He is driving only in daylight hours between a half hour before sunrise until a half hour after sunset and there is sufficient light to discern clearly persons and vehicles at a distance of 500 feet ahead; and

(b) He is driving a vehicle or combination of vehicles in which:

(A) The distance from the center of the top of the steering post to the left outside limit of the body, cab or load of the motor vehicle is less than 24 inches; or

(B) The distance from the center of the top of the steering post to the rear limit of the body or load is less than 14 feet.

(3) A driver who fails to give a stop or turn signal by activating signal lamps in violation of subsection (1) of this section commits a _____.

(4) A driver who fails to give a stop or turn signal in violation of subsection (2) of this section commits a _____.