

COMMITTEE ON JUDICIARY
Subcommittee on Revision

November 26, 1973

Minutes

Members Present: Representative George F. Cole, Presiding
Chairman
Representative Stan Bunn
Senator Wallace P. Carson
Representative Robert P. Marx

Excused: Senator Elizabeth W. Browne

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

Others Present: Ms. Vinita Howard, Motor Vehicles Division
Mr. Tom Fender, Auto Safety & Equipment
Association
Mr. Robert G. Ross, Amalgamated Transit
Union
Mr. Lawrence George, Engineer, Highway
Division; Secretary, Speed Control Board
Mr. Jim Dutoit, Automobile Club of Oregon
(AAA)

Agenda: Speed Restrictions
Preliminary Draft No. 1; November 1973

Representative George F. Cole, Presiding Chairman, called the meeting to order at 9:45 a.m. in Room 14, State Capitol.

Approval of Minutes of Meeting of November 13, 1973

The minutes of the meeting of November 13, 1973, were unanimously approved as submitted.

Speed Restrictions, Preliminary Draft No. 1; November 1973.
General Discussion

Mrs. Embick announced that the draft under discussion deals with the speed statutes, ORS 483.102, 483.118, 483.122 and 483.124, and proposed changes. These have been studied and compared with the Uniform Vehicle Code and certain obsolete portions have been deleted. Designated speed limits in Oregon as opposed to absolute speed limits is also a topic.

Section 1, reported Mrs. Embick, contains the Basic Speed Rule as it is presently stated with a change in the structure of the wording. She said the draft does not purport to recommend a change from the existing designated speed law. Section 2 is a statement as the law is currently written with the maximum designated speeds. Mrs. Embick also mentioned that the designated speeds differ from those in the UVC.

Section 3, according to Mrs. Embick, deals with the designation of speeds by the Department of Transportation on the basis of engineering and traffic investigations. She added that the speeds are set at either a higher or lower rate of speed than the designated speeds in ORS 483.104 for the state highways. Uniformity is achieved through a State Speed Control Board in setting designated speeds within county roads and within municipalities. She stated that the maximum regulations for trucks, buses and other such vehicles remain unchanged. Essentially, everything in the draft has to do with the maximum speeds as they are outlined in the statutes now and the methods of changing them. The language is changed in each statute so that the offense or violation is set out, and the appropriate classification for penalty purposes will be set out in the subsection of the same section of the law.

Mr. Lawrence George stated that work under his supervision encompasses both the state highway system and the county roads and city streets. The traffic engineering section within the Department of Transportation performs engineering work to determine recommendations as to speed designations to be submitted to the Department of Transportation. He said that historically the Department of Transportation has not supported maximum speeds. One reason is that the cost involved in changing signs would be about \$900,000. This includes the state highway system, the county roads and city streets. In answer to a question by Senator Carson, Mr. George pointed out that Washington has had a maximum speed law for many years, and their signs include wording that would have to be added to Oregon signs, since the signs in this state do not carry the word "limit" or any connotation that would indicate that the speeds would be maximum.

Senator Carson indicated that Oregon, in deference to the energy crisis, changed to a lower maximum speed in about three days

without too much cost. The State of Washington took about three weeks to make the change, and the cost was much higher. Mr. George explained that he believed that many large Washington highway signs were replaced. He said that in Oregon, according to the Attorney General, the signs would have to be changed to show that the posted speeds would be maximum limits. Senator Carson added that this could be shown temporarily with a bumper sticker-type strip. Mr. George replied that the high cost estimate is based on the premise that many signs would have to be replaced.

Another reason, according to Mr. George, the Department of Transportation has not supported a maximum speed is because it is difficult to pinpoint the relationship of speed to safety and accident prevention.

Senator Carson stated that in his opinion, taking into consideration the design of automobiles and highways and the skill of drivers, there is a speed beyond which it would be unsafe to drive under any circumstances. Mr. George added that considering the circumstances now, the fuel products supply and attitudes that he doesn't believe the Highway Division would take an active stand either for or against a maximum speed law. He said that a maximum speed law would be desirable from the standpoint of preventing accidents and conserving fuel.

Mr. George, in answer to a question, informed the subcommittee that the maintenance budget for highway signs annually is near one million dollars. In his opinion, Mr. George said, it would be best to make permanent changes in the signs. However, temporary changes could be made fairly economically.

In answer to a question by Chairman Cole, Mr. George replied that the Highway Division didn't have a formal opinion from the Attorney General requiring highway signs to show a maximum rather than a suggested speed. The National Uniform Sign Manual, which is used as a guideline, does have standards using the word "limit" on signs. Oregon does deviate from the national standard in that the signs used are appropriate for a basic speed law.

Senator Carson suggested that Oregon could possibly adopt an absolute maximum speed of 75 or 80 miles per hour, and the Speed Control Board could be given the authority, with certain guidelines, to post speeds for certain areas. These speeds would be the maximum for those areas, and the basic rule would be retained to apply for differences in weather and roadway conditions. Violation of the posted speed would be a misdemeanor, and violation of the basic rule would be going less than the posted speed but still a dangerous speed for the existing conditions. Senator Carson stated that definite consideration should be given to the fact that areas in Oregon vary greatly, such as the Willamette Valley compared to Eastern Oregon.

The absolute maximum would apply to all areas. Chairman Cole added that the Speed Control Board would need to analyze every stretch of road in the state.

Representative Bunn suggested that there could be a problem involved with some roadways in that one might be traveled comfortably in the summer at 70 miles per hour, and perhaps for nine months during the winter the maximum speed should be only 50 miles per hour. He was concerned that in such a case the maximum might be set at 50 mph and travelers would violate the law for three months of the year simply because it wouldn't be practical to drive at 50 miles an hour.

Ms. Howard reported that the Motor Vehicles Division has long been in favor of the basic rule with a top maximum speed. The MVD has also favored studies of various sections of highways to determine what should be a maximum for each section. She said that if the speed wasn't posted, whatever is written in the statutes would apply as a maximum.

Ms. Howard explained that she was convinced that some people plead guilty to violation of the basic rule or forfeit bail, when they probably were not in violation. The law does require that the speed traveled be written on a citation and the speed designated for an area also be written. Under strict interpretation of the basic rule, an individual might have traveled at 45 mph when the posted speed was 35 and pleaded guilty to a violation. If weather conditions were good and traffic light, it is possible the individual was not guilty and simply didn't understand what the basic rule concept provides. In answer to a question by Chairman Cole, Ms. Howard answered that the MVD has supported a maximum speed of 75 mph.

In reply to a question by Representative Marx, Ms. Howard stated in securing statistics on death rates on highways with basic speed laws as compared to highways with maximum speeds, it would be possible to obtain figures to substantiate any approach favored. She stated that a posted limit is easier to understand and to enforce.

After a discussion with the state police, Ms. Howard reported that she believed there might be a need for some type of provision for changing the maximum limit on the basis of factors other than safety. The Department of Transportation or the Speed Control Board could be given this authority. Mr. Paillette indicated that Ms. Howard's statements conform to § 11.801.1 of the UVC, except that the top speed in this section of the UVC is 60 mph. Ms. Howard stated that she would suggest a higher speed as a maximum speed. In answer to a question by Chairman Cole, Ms. Howard stated that if conditions are poor and the posted speed is high for such conditions, then the basic rule would apply.

Ms. Howard reported that Oregon's basic rule refers to "traffic, surface and width of the highway, the hazard at intersections and any other conditions then existing" and the UVC includes "or by

reason of weather or highway conditions". The UVC provision is more specific, and it might be well to consider it.

Mr. Tom Fender reported that the Oregon Oil Jobbers support the present practices for conserving petroleum for the time being, and the Automobile Safety and Equipment Association supports completely the Oregon basic rule law as it now exists. He stated that flexibility is an issue and that flexibility is needed at the top as well as the bottom. A maximum speed limit with the application of the basic rule for speeds under the maximum does not allow for flexibility at the top. He also said that he was concerned that a driver may become bored and complacent driving at a speed that presents no challenge level. He added that by challenge level reference was being made to the challenge of environment, traffic conditions, weather and etc.

Mr. Fender added that the insurance industry's attitude toward moving violations of any kind is of concern. Because of one violation, a driver may be reclassified from a "10 percent good driving discount to 10 percent bad driving surcharge".

Municipal courts, according to Mr. Fender, because of their financial arrangements, have enormous incentives to be overzealous in the enforcement area. It is possible to collect a great deal of revenue with an absolute speed limit, because there is virtually no defense against that type of an arrangement.

Mr. Fender summarized that the flexibility the existing basic rule offers as it relates to the driving environment provides incentives that may well be lost with restricting legislation. In answer to a question by Senator Carson, Mr. Fender stated that there probably is a practical maximum speed based on average conditions. Relating this to petroleum, Mr. Fender said, there are motor vehicles that suffer almost no fuel penalty between 50 and 70 mph. He said that he really couldn't state a definite maximum limit, but that he believed in sparsely populated areas a motorist could drive between 80 and 85 miles per hour.

Senator Carson stated that he believed an absolute limit in specific areas is desirable whether there is one car on the street or many. He said that no one should travel beyond 25 miles in a residential area, no matter what the conditions, because of endangering children.

Mr. Fender stated that differences in speed cause accidents. He stated again that a maximum limit imposes controls at the top but not at the bottom. He said that what is needed is something with flexibility at the top and that existing law encompasses this now.

Mr. Paillette stated that the intent of the draft, other than to change the structure of the sections somewhat and to rephrase them, was not to change the basic rule concept that is stated in the statutes right now. In other words, the basic rule can be applied to both ends. Traveling at less than the designated speed can also be a

violation. Mr. Paillette also mentioned that the UVC encompasses a maximum speed and that driving above that speed is a violation. Also, the basic rule can be violated while driving 40 in a 60 mile an hour zone under certain conditions.

Mr. Robert Ross informed the subcommittee that he represents the Amalgamated Transit Union and is a bus driver. He said that the basic rule now gives the average motorist the right to make decisions as to what is safe and right and does not accord this privilege to professional drivers of buses and trucks. Mr. Ross was of the opinion that this condition exists in no state other than Oregon. State Police will stop a bus or truck rather than an automobile, because an automobile driver has a defense in the basic rule. However, the state policeman has a sure conviction when he cites a bus or truck driver. Mr. Ross stated that this creates a hardship on the driver and wastes the time of the policeman when he should be devoting that time to the correction of conditions that cause accidents.

Mr. Ross said that when a bus driver is cited, he always goes to court and usually asks for a jury trial. This is important, because three infractions within a year are cause for dismissal. He stated that it isn't practical for a bus to follow a car going under 55 miles per hour when the car could travel 80 safely. However, it is a violation for the bus to pass the car, if the bus needs to travel over 55 to do so.

Mr. Ross mentioned that buses are governed not to exceed 68 miles per hour. He said that bus drivers don't have a preference in a maximum speed as opposed to a basic rule. They simply would prefer more uniform speeds for buses and cars. In answer to a question by Senator Carson, Mr. Ross replied that bus drivers would welcome a faster speed than that designated for automobiles during the energy crisis. It would represent a saving in fuel in that the bus might get eight miles per gallon but would be carrying an unlimited number of passengers, while a car may get 11 miles per gallon but would maybe be carrying four or five passengers at the most. Also, he said, a slower speed is a pay cut for bus drivers since they get paid by the mile.

Senator Carson agreed that some vehicles are built to travel at a faster speed and that bus drivers are professionals in their field. However, the experience of being passed by a bus is frightening.

Mr. Ross stated that the trip from Portland to Eugene by bus used to take one hour and 50 minutes. It now takes, with the new restrictions, about 20 minutes longer. In reply to a question by Chairman Cole, Mr. Ross answered that the maximum speeds for buses before the new rulings were 55 on secondary highways and 65 on main highways. He said that whether a bus driver is given any leeway as to speeds depends entirely on individual officers. Several times bus drivers have been cited for traveling 51 or 52 miles per hour in a 50 mile per hour zone. In reply to another question, Mr. Ross said that buses are built for high speeds and that the drivers are experienced. He

believed a driver should be judged on his individual merits when there is any question as to the violation of the basic rule.

Mr. Jim Dutoit reported that the Automobile Club of Oregon conducted a survey of its members regarding a maximum designated speed as opposed to a basic speed law, and the results were heavily in favor of the maximum speed. His opinion was that many drivers do not understand the basic speed law. Speaking for the Automobile Club of Oregon, he wanted the Club to go on record as favoring a maximum speed as opposed to the existing basic speed law. Mr. Dutoit indicated that he would forward copies of the AAA survey to the subcommittee. In answer to a question by Mr. Paillette, Mr. Dutoit stated that a maximum speed of 75 miles per hour with a basic speed law for speeds below that figure would be satisfactory. His opinion was that the public understands a designated maximum speed and finds the basic speed law more difficult to comprehend.

Senator Carson suggested that since the AAA newspaper is so widely read, it would be advantageous to have reports submitted as to the activities of the Judiciary Committee and to encourage the activity of AAA members. The results of any survey on the activities of the subcommittee would be of great interest to the subcommittee members.

Section 1. Basic speed rule. Mrs. Embick reported that although there is no substantial change in section 1, it has been restated for greater clarity. She compared the section with the basic rule of the UVC, as shown on page 3 of the draft, and discussed the phrase in section 1 that deals with specific situations.

Senator Carson indicated that "weather and visibility" are important and that perhaps they should be included in the statute, since there was some question as to whether "and any other conditions then existing" would be adequately understood by the average motorist.

After considerable discussion as to whether to include phrases dealing with mechanical conditions of automobiles in the statute, the members decided it would be best to adopt a comprehensive motor vehicle safety standards provision and not deal with the subject in the basic rule.

Chairman Cole moved section 1 be amended as follows:

Section 1: on line 5, after "tions" insert ",weather, visibility".

The motion was unanimously adopted.

Lt. Acheson informed the subcommittee that it has been the contention of the state police that for better understanding and enforcement a maximum speed with a basic rule for dealing with

situations when slower speeds might be more appropriate would be easier to work with. In answer to a question by Senator Carson, Lt. Acheson answered that on a citation form unusual conditions are written in, except for accidents, and not checked off from a list.

Section 2. Maximum speeds, exceeding which is prima facie evidence of violation. Mrs. Embick stated that the only proposed amendment in ORS 483.104 deletes the reference to 483.102, which is repealed by section 1 of this draft and substituting the words "the basic speed rule."

Mrs. Embick made reference to paragraph (a) of subsection (1) to the phrase "or a crosswalk when children are present". She stated that it is not specific and that it was probably intended to read "or a 'school' crosswalk when children are present".

Section 2, reported Mrs. Embick, deals with setting designated speeds for different areas. She pointed out that the comparable provision in the UVC, § 11-801.1, page 4 of the draft, contains different limits. Mrs. Embick advised that the definition for "urban district" appears on page 12 of the UVC and reads as follows:

"The territory contiguous to and including any street which is built up with structures devoted to business, industry or dwelling houses situated at intervals of less than 100 feet for a distance of a quarter of a mile or more."

She indicated that the UVC does not set a special limit for schools and that no distinction is made between business and residential districts.

In answer to a question by Chairman Cole regarding the posting of speed limits for a given area when a different speed is used for daytime and another for nighttime, Mr. George stated that there really was no satisfactory way of doing this. As an example, he reported that the State of Washington uses a superimposed reflective-nonreflective type of lettering where the appropriate letters show up during the day and the others at night. Some states, he said, post dual signs.

Chairman Cole asked Mr. George about the intent of the reference to crosswalks in (a) of subsection (1) on page 7 of the draft. He answered that when children are present in a crosswalk, speed for that area is designated at 20 miles per hour. Often, a crosswalk that is used heavily by children for only a short time during the day might be five blocks from the school. Automatically, this is a 20 mile per hour zone when children are present.

Senator Carson made the suggestion to reduce speeds in school zones to 15 mph. Mr. George replied that he didn't believe braking

would be any more efficient at 15 mph than it would be at 20. Senator Carson pointed out that the 15 mph speed might have an effective psychological impression on drivers and those who wished to drive faster might take another route. Mr. George added that a vehicle that wasn't warmed might have difficulty idling at 15 mph. Mr. Dutoit added that in his opinion 15 mph would be very slow and that perhaps sidewalks would be the answer. Senator Carson pointed out that a four-lane intersection with good control and a guard wouldn't be dangerous. Mr. Fender cited an example where reflectorized land divider discs are used to write "school" on the street, and when a car drives over them, the driver gets a slight jarring effect.

Mr. George pointed out that (d) of subsection (1) on page 7 of the draft might be difficult for the general public to understand, and he specifically made reference to "district speed". He also questioned the specific distances mentioned in the paragraph. He believed the intent to get people to slow down is all that is needed, and this can be done with more general wording.

Senator Carson moved subsection (1) of section 2 be amended as follows:

In line 1 of paragraph (b), following "approaching" delete "within 100 feet of" and in line 3 following "railway" delete "within a distance of 400 feet in either direction".

Delete paragraph (d).

Motion carried unanimously.

Senator Carson inquired whether the subcommittee would want to change the prima facie evidence provision and restore some language. He said he was referring to prima facie evidence of a violation. One way to handle it would be to make it a rebuttable presumption, because he believed there is a difference between prima facie evidence and a rebuttable presumption even though the courts have a tendency to treat them the same. Another way would be to write in a presumption, and if it isn't stated whether it is conclusive or rebuttable, it would then become rebuttable. A presumption is rebuttable unless stated as conclusive. He said that it shall be presumed to be a violation or shall be a presumption of a violation. In other words, Senator Carson continued, it would be getting away from prima facie evidence and into the presumption of a violation.

Senator Carson said that the change would make the rebuttable presumption more clear and that prima facie normally isn't sufficient evidence on which to pass a verdict. This would shift the burden from the state to the citizen. As an example, he stated, if a driver is doing 30 in a 25 mph zone, it is a presumption or a prima facie that the basic rule has been violated, and it would be up to the driver to show the court that he wasn't guilty. This shift should

be protected, but the question is whether it would be helping the citizen if the language is straightened out. Senator Carson continued that if it wouldn't be a help to the public, then it might as well be left without change. He stated that he personally believed it would be helpful to make the change.

Mr. Paillette asked the subcommittee if the staff could have until the next meeting to submit some alternatives. He mentioned that a possible approach might be to provide for an affirmative defense under certain circumstances. For example, write in that it is sufficient to convict and to have a defense for certain circumstances. Senator Carson added that this would probably bring the statute in closer conformity with the UVC, and by including designated speeds and opening up a defense, flexibility would be protected.

Speeds

Chairman Cole asked the members how they felt about the breakdown that Oregon now has on maximum speeds as set for school zones, residence areas, business districts, etc. as compared to the UVC. Representative Marx replied that it would be practical to have more classifications. Chairman Cole indicated that Senator Carson's proposal, which would encompass a designated speed and which, unless otherwise posted, would be legal for a particular area, would cover the question raised by Representative Marx. The general consensus of the subcommittee was that it is important to vary speeds for different types of areas.

Senator Carson stated that it is his understanding that speeds are set in some areas by taking the average speed at which motorists travel in a particular area.

Mr. George reported that the Speed Control Board conducts speed checks at locations that are investigated. The findings are plotted on a graph, and the speed at the 85 percentile point on the graph is selected. This means that 85 percent of the drivers drive at or below that particular speed. This method of determining a speed has been used for about 35 years. There have been indications, he said, that the 85 percent speed might not be the right one to use for urban areas. He believed that 70 percent would be a better determining point. A city may ask the Speed Control Board to set a rate of speed for a particular area at 35 mph. After conducting its investigation, the speed limit may be set at 40 mph because of the outcome of the plotting on the graph. Because of this type of situation, a lower percentile might be better. He said a dual standard might be all right.

Senator Carson expressed the opinion that something is wrong when the speed at which the fastest driver travels through an area is a determining factor in setting a designated speed. There is a problem, he said, in selecting a speed for an area heavily used by pedestrians when the determination made is based on the speed of the automobiles.

Mr. George stated that work needs to be done with cities and counties in order to find a way to make realistic decisions on designated speeds. It isn't practical to monitor an area when all children are in school.

Mr. George commented that it is necessary to designate a reasonable speed--one that people will observe. Also, he said, the speed needs to be safe enough to encompass all conditions. Mr. George said that the Speed Control Board does take into consideration extenuating circumstances, as well as the 85 percentile figure, in setting speeds. His group, he said, has had complaints in setting a lower speed than indicated by the 85 percentile figure.

Senator Carson suggested the subcommittee secure information on the Speed Control Board's guidelines and perhaps insert some exceptions. Mr. George agreed that reworking the present procedure would be desirable. He indicated that the League of Oregon Cities and the Association of Oregon Counties should be involved.

Mr. George said that he would submit a proposal to the subcommittee at its next meeting.

Senator Carson brought up the question as to whether there should be other criteria considered in setting speeds besides the present statutory provisions. He believed that it would be appropriate for the subcommittee to consider the question and the inclusion of strict guidelines.

There followed a discussion as to whether the subcommittee should proceed preparing guidelines for the setting of speeds. The consensus was that now would be the time and that they are definitely needed in order to prevent variances in the future.

Representative Bunn asked if there were some way to keep those involved with the UVC informed as to opinions of the subcommittee and what it is doing. Senator Carson suggested contacting the Oregon congressional representatives. Ms. Howard added that Oregon has had representation on the uniform committee. Representatives are selected on the national level from agencies involved with motorists, highways, traffic, etc. An example would be an official from the International Association of Chiefs of Police.

Mrs. Embick cited an example where a state, by a memorial or a resolution through its legislature, recommended changes in the UVC. Mr. Paillette added that the UVC has had changes in sections that were adopted in original form by some states, and now the states have the old UVC sections.

Ms. Howard agreed with Representative Bunn that the Full Committee forward information on opinions and what has been accomplished to the UVC committee. Mr. Paillette suggested that the committee not

submit only sections but to wait and send the information as a proposed code. He stated that the differences could be pointed out at that time. Senator Carson suggested that as a section is completed to have Mrs. Embick prepare a report on the differences between the section adopted and the corresponding section in the UVC. This way, the differences and reasons for them would be known, and the position of the subcommittee could be justified. Mr. Paillette added that this would be a continuation of what has already been started.

Mr. George asked for and was granted permission to work with the staff in the area of setting speeds for federally owned land--primarily in recreation areas. His group, he said, has been asked several times the past few years by the Bureau of Land Management and National Forest Service to assist in establishing speeds. He said they have no statutory authority to do this, and he would like to work with the subcommittee regarding proposed changes in the law.

Chairman Cole announced the next meeting of the Subcommittee on Revision would be at 9:30 a.m., December 11, 1973.

The meeting was adjourned at 12:30 p.m.

Respectfully submitted,

Anna McNeil, Clerk
Subcommittee on Revision