

COMMITTEE ON JUDICIARY

Subcommittee on Revision

December 20, 1973

Minutes

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

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

Also Present: Mr. L. E. George, Engineer, Highway Division
Mr. Jim Dutoit, Automobile Club of Oregon
Mr. E. W. Mattingly, Amalgamated Transit Union 1055
Mr. W. H. Staats, Amalgamated Transit Union 1055
Capt. John Williams, Oregon State Police, Traffic
Division
Ms. Vinita Howard, Motor Vehicles Division
Mr. Ralph Sipprell, Dept. of Transportation
Mr. Robert Ross, Amalgamated Transit Union 1055

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

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

The Chairman called attention to the proposed amendments drafted by Mr. Paillette and attached to these minutes as Appendix A. Mr. Paillette reported that section 1 of the draft had been approved by the subcommittee and now incorporates the amendments with respect to weather and visibility adopted at its last meeting. The statement of the basic rule remains the same, he said.

Section 2. Maximum speeds. Mr. Paillette advised that the changes which appear in paragraphs (a) and (b) delete a portion of the original language. The offense of speeding appears in subsection (2) of the amendment. It was pointed out that the first two sections are meant to be read in conjunction to section 3, which Mr. Paillette indicated was the most important part of the amendments. The substance of section 2 had been previously adopted by the subcommittee, and he advised that at its last meeting it had been discussed and agreed upon to include a reference to ORS 483.106 in subparagraph (B). Mr. Paillette thought this could be avoided by including the phrase "as authorized by law" which has been included in the subparagraph.

Chairman Browne recalled the subcommittee's discussion of including all federal forest roads and asked if "public park" would include Crater Lake and other federal parks. Mr. Paillette did not believe the language would include such areas and Mr. George agreed that it would not take in the Dunes Recreational area which the Forest Service is proposing. Senator Carson asked what Crater Lake would be called if it was not a public park and Mr. George responded that the Dunes area will be officially designated by Congress as a recreational area and Crater Lake is designated as a national monument, and is not patrolled by the state. Chairman Browne indicated that the overall suggestion was to consider the forest roads and at this time the parks could be considered.

Representative Marx asked if the state's enforcement could also consider federal lands and Mr. George replied that the different agencies have asked for assistance in establishing a speed zone which could be patrolled and enforced by their personnel. Presently no one has the statutory authority by federal law or state law and this would give them the power to set the speeds although the enforcement would still be the responsibility of the Forest Service or Bureau of Land Management.

The Chairman asked if there might be places on federal lands where it would be undesirable for the state to impose restrictions. Mr. George thought there could be although on logging roads, for instance, they may wish such enforcement. This would be done on request, he said, and no study or inspection would be made unless the request came from the agency in charge. The Chairman suggested drafting language to the effect that the speeds would be enforced only on such federal roads or highways as requested. Mr. Paillette stated that it could be done although he doubted the necessity of using such language in the section. Senator Carson then asked if it was desirable to set a speed of 25 mph for all recreational areas and monuments although he doubted this would be what the subcommittee would wish. Mr. George suggested that the section to place this speed would be in ORS 483.108 where it establishes the authority to do so.

Mr. Paillette called attention to the language in subsection (1) "Except where a special hazard exists that requires a lower speed for compliance with section 1 of this Article" and commented that this language taken with section 1, which sets out the basic speed, is meant to apply the basic rule to those speeds that are less than the posted speed. The basic speed rule as appears in section 1 would apply only in those situations where there was a special hazard which required a speed less than the posted speed. Section 2 would establish that the speeds provided for in school zones and railroad crossings, etc., are maximum with the understanding that the violator would also have the affirmative defense provision. He pointed out that the three sections were meant to be read together as per the subcommittee's decision at its last meeting to state the basic rule in terms of a maximum speed with an affirmative defense.

In answer to Representative Bunn's question, Mr. Paillette explained that it was his understanding that the subcommittee had desired to have a three pronged approach - the basic rule for the lower speeds under the designated speed, the maximum speed limit between the designated and the upper limit of 75 mph and the affirmative defense available to the motorist under those circumstances. Section 3 goes on to provide that defense and subsection (2) of that section is new and establishes an absolute upper limit of 75 mph and which takes away the affirmative defense provision if the driver exceeds the 75 mph limit.

Senator Carson noted that if the engineers believe that the highways could safely hold 60 mph and it was posted that limit, then it would not be unlawful to go this posted speed.

Mr. Paillette indicated that section 3 would be new law and there would be no authority for the State Speed Control Board to authorize a speed greater than 75 mph.

Senator Carson recapitulated the situation in that a maximum speed of 75 mph would be established and under no circumstances could this speed be exceeded; the basic rule applying the designated speed and below was retained and restated to make it an affirmative defense between the designated speed and the maximum of 75 mph. He was concerned that it did not appear that there was authority for the agency to set a speed of 60 or 65 mph and Mr. Paillette advised that this would be picked up under ORS 483.106 and 483.108 and it would be necessary that the statutory reference to ORS 483.104 be changed to conform with section 2. Senator Carson asked if it would be desirable to bring this reference into section 2 in order that the public could more readily understand the law. Mr. Paillette noted that the reference to ORS 483.106 and 483.108 had already been placed in section 2. The Chairman thought that for educational purposes it was desirable to place the references in the section.

Ms. Howard called attention to paragraph (c) of subsection (1), section 2 and suggested the language read "55 miles per hour in other locations unless otherwise designated and posted."

Captain Williams indicated that other speeds are posted by the Highway Department under authority of ORS 483.106 and 483.108 and are not specifically listed in the draft. Mr. Paillette noted that subsection (1) could read "the speed limits designated under this section shall be maximum lawful speeds unless a different speed is established under ORS 483.106 or 483.108."

After several suggestions by the witnesses and members as to how to restate this reference, Senator Carson suggested that paragraph (c) be restated to say "Fifty-five miles per hour unless otherwise posted." The phrase "in other locations" would then be deleted. The reference to ORS 483.106 or 483.108 in subsection (1) could then be inserted in paragraph (c).

Mr. Paillette was of the opinion the phrase "in other locations" should be retained in paragraph (c) as it is read in conjunction with school districts, business districts, etc.

Senator Carson moved section 2 be amended to delete the words "and ORS 483.106 or 483.108" in line 4 of subsection (1) and that paragraph (c) be amended to read "Fifty-five miles per hour in other locations unless a greater or lesser speed is designated in accordance with ORS 483.106 and 483.108."

Mr. Paillette referred to the proposed deletion in subsection (1) and asked if there were any circumstances under which other speeds would be designated by the Speed Control Board which would change the speeds for school grounds, grade crossings, etc. Mr. George replied that there have been instances where it has been changed for grade crossings. Ms. Howard questioned if by eliminating the references in the subsection the 20 and 25 mph speeds would be limited to that speed only. She believed that the reference to these two statutes must remain to give the authority to the agency to change these two speeds. Mr. Paillette thought the authority would still remain but could create an ambiguity.

Senator Carson moved to amend his earlier motion to delete the reference to ORS 483.106 and 483.108 in subsection (1).

Mr. Paillette suggested the word "and" in line 4 of subsection (1) be replaced with "or".

Vote was taken on Senator Carson's motion to amend paragraph (c) of section 2 and incorporate Mr. Paillette's suggestion to substitute "or" for "and" in subsection (1).

Motion carried unanimously.

Section 3. Speeding; affirmative defense. The Chairman read a letter to the subcommittee received from the Transit Union which expressed their appreciation for the opportunity to present their views at the meeting of December 11 with respect to the basic rule provision and which further stated that it was their unanimous opinion and suggestion that busses should be restricted to a maximum speed of 70 mph.

Senator Carson recalled previous discussions with respect to the maximum speed of 75 mph of which he referred to as a "challenge speed." He wondered if perhaps a lower maximum speed should be set purely for psychological reasons which would in effect give authority to the Speed Board and the Highway Department to treat trucks or busses differently from passenger automobiles. This could be done by setting a maximum speed for busses at 70 mph and trucks at 65 mph, he said.

Mr. Paillette noted that section 2 of the adopted amendments would repeal ORS 483.104 and that amendments would be made in other statutes to take into account section 2.

Mr. Sipprell spoke to section 2 and Senator Carson's amendment to paragraph (c) of subsection (1) and asked if the words "and posted" should also be contained in the amendment as he was of the opinion this is contained in ORS 483.106 and 483.108.

Senator Carson moved that parallel language be placed in paragraph (c), subsection (1) of section 2.

Motion unanimously adopted.

Captain Williams referred to subsection (2) of section 3 and asked if the 75 mph maximum speed would remain in the draft. Senator Carson wondered if by having this remain more harm than good might be done as he believed this could become a target speed for drivers and Captain Williams responded that it was their position that a maximum speed should be set unless otherwise posted - if posted this should be the maximum speed, and without the affirmative defense. He agreed with Senator Carson's thoughts that by placing this maximum of 75 mph it would be a challenge for the driver to try for that speed and favored the language set out in subsection (1) of section 2 referring to the maximum lawful speeds as he believed the average driver will think he must drive at 60 mph, for example, if it is posted at that speed.

Ms. Howard was of the opinion that there is a great leeway in speeds of 55 mph and 75 mph and suggested that paragraph (c) of section 2 be amended to read "Sixty miles per hour" and that subsection (2) of section 3 be deleted. Mr. Paillette pointed out that if this were done, the affirmative defense provision then would be available above 60 mph and Ms. Howard withdrew her suggestion.

In response to Captain Williams' proposal to set the absolute maximum to 70 mph, Representative Bunn stated he could not support a reduction to 70 and he asked if this option was not open to him, would he prefer having 75 mph as a top maximum or have no top maximum limit set. Captain Williams chose the latter alternative, to which Mr. George concurred. Ms. Howard agreed that the 70 mph figure was desirable but if given the above choice she would select 75 mph as the top maximum.

Mr. Staats told the subcommittee that most bus drivers contend they have a maximum control over the busses when driving at 70 mph but this is lost when traveling over that speed and he believed the same effect would apply to passenger car drivers.

Representative Marx moved the adoption of section 2 as amended.

Motion carried unanimously.

Senator Carson moved to delete subsection (2) of section 3.

Speaking on his motion, Senator Carson said that although his preference would be to lower the absolute maximum, he agreed with the concerns shown by the witnesses that setting a speed of 75 mph would make this a target speed.

Representative Marx voiced the opinion that 75 mph was a reasonable maximum speed on the freeway and asked if citations would be issued at a speed of 76 mph, for instance, if the roads were dry and visibility good. Captain Williams responded that the citations would be given under these conditions for a speed closer to 80 mph.

Vote was taken on Senator Carson's motion to delete subsection (2) of section 3.

Motion carried unanimously.

Senator Carson moved the adoption of section 3 as amended, along with the additional deletion of the first clause in subsection (1) which relates to subsection (2).

Motion carried unanimously.

Senator Carson noted that the sections under consideration were of a critical nature and believed it feasible to raise those issues which had been discussed relating to the deletions and additions before the full committee when it considers the amended draft.

Section 3. Special speed limits set by Department of Transportation. Mrs. Embick pointed out that because the affirmative defense provision has been added as a new section 3, all sections will be renumbered and this section would now become section 4. The section amends ORS 483.106 and Mrs. Embick said that inasmuch as sections 3 and 4 relate to establishment of different speeds by the Department of Transportation and the State Speed Control Board, they should be considered jointly. The original section 3, she reported, gives the Department of Transportation jurisdiction of speeds over state highways exclusive of those which are within the corporate limits of cities. Section 4 authorizes the State Speed Control Board, after investigation of the engineering and traffic situations, to change speeds on city and county roads. The new material in section 3 gives increased flexibility in setting speeds depending on different times of day, varying weather conditions and other factors bearing on safe speeds, and is language taken from the UVC.

With respect to the word "portion" contained in line 6, Mrs. Embick explained it had been inserted in the draft in lieu of "section" inasmuch as the definition of highway now includes anything which is open to public use of vehicles.

Senator Carson moved to delete "portion" in line 6 and retain the word "section."

Motion carried unanimously.

Senator Carson stated his disapproval of using the 85 percentile figure and although he did not wish the legislature mandating 70 rather than 85, he voiced concern over the use of the cities' role in setting speeds with the Speed Control Board.

Mr. George spoke to ORS 483.106 and 483.108 and presented material to the subcommittee which outlines the procedures used both in the investigations made for the Department of Transportation and the State Speed Control Board and which shows how the 85 percentile figure is arrived at and how it is used. He reported that the Speed Control Board wishes to meet with the League of Oregon Cities, Association of Oregon Counties and if possible, a member of the Judiciary to discuss the results obtained from the field investigations using the 85 percentile speed, which approach is universally used. Mr. George recalled a speed zone investigation which had been done in Rivergrove, a small city near Lake Oswego. The Board had arrived at a 45 mph speed recommendation on a road which goes through an extensively developed residential area and he related that the field investigator checked during the middle of the day and had no way of monitoring the movement of school children. This 45 speed was based on the 85 percentile speed but an important piece of data was missed because the investigator was there at the wrong time of the day. Mr. George believed that because of this and other situations, discussions should be held with all parties involved in order to arrive at some different point on the curve. He was convinced that another percentile point on the curve should be taken which represents the particular type of community and shows in most instances a speed which will take care of the existing problems. He advised that, based on evidence given by the mayor, city recorder and school district chairman, the Board arrived at a 30 mph zone in the instant case.

Senator Carson asked if Mr. George would meet with the Association of Oregon Counties and League of Oregon Cities and return with their recommendations. Mr. George related that in setting the 30 mph zone in the above situation, there occurred bitter accusations from the county in that they had departed from standard procedures and were setting up something which could not be enforced by them. Senator Carson asked if at the planned meeting, changes which should be made in the statutes to allow the Speed Board to set a 55 mile per hour speed be examined.

Representative Bunn agreed with the end result in setting the 55 mph speed limit, but voiced objection with the method used, which he believed to be illegal. He asked that the subcommittee be advised as to how this determination was made and what attempt was made to conform with the statute.

Chairman Browne asked Mr. George to describe these procedures and was informed that the Transportation Commission set the speed on the freeways. The State Speed Control Board took action in two areas, one where freeways penetrated city limits and the other where county roads were zoned above the 55 mph limit.

Mr. Sipprell said this action was taken by the Transportation Commission through a telephone conference call and the 55 mph speed was based on the fact that a number of drivers were driving at 50 mph as suggested by the federal administration. In answer to the chairman's question, he said he was unaware of any specific study made but that an accident potential arose because some drivers were driving at 50 mph and the others at a greater speed.

Senator Carson agreed with Representative Bunn's contention that even though the end result is meritorious the means by which it was reached was questionable. Mr. George remarked that his staff had monitored speeds at 13 locations statewide before the change and which is still in effect on a weekly basis, and offered to bring copies of these studies to the afternoon meeting. Chairman Browne expressed interest in examining the studies made the week prior to the change.

Mr. Paillette referred to the speed zone criteria and asked if this is used under both ORS 483.106 and 483.108 and Mr. George replied in the affirmative.

Mr. Sipprell informed the subcommittee that he would supply them with the basis on which the Transportation Commission took its action and also the report made to the Commission which had been provided them by Mr. George's staff. The decision was based in part, he said, on a request made by the Traffic Safety Commission to consider the setting of speeds. Ms. Howard noted that a copy of a Resolution had been received in her office from the Traffic Safety Commission requesting changes in speed because of the conflicts between 50 mph and 70 mph which were occurring on the highways. She reported that she had not observed any supporting data at that time but presumably this came from the State Police and radar studies. She recalled examining the Solomon studies which discuss the problems and potentials for increased accidents when there are wide variations in speeds on the highways. The Chairman asked Ms. Howard to supply the subcommittee with this Resolution and the supporting data from which it was drawn.

Mr. Sipprell mentioned a request had been received from the Greyhound Company to allow them to travel at a speed of 60 mph and that the Commission's position was that if this were allowed, the same rights would have to be given to all types of vehicles and consequently the request was denied.

Inasmuch as there was to be further consultation between the State Speed Control Board and the cities and counties, Mr. George believed they should confer with the initiator to learn the reasons for any request, and also recommendations which they might have. He mentioned that in some of the smaller cities and less populated counties this is not done, inasmuch as they either do not have engineering personnel or they are not available when the study is in progress. By administrative action this could be required to be a part of the report, he said. Under the statutes, the cities and counties have the right to remonstrate after the preliminary action is taken and are able to appear before the Board which, in turn, relies heavily on any suggestions or alternatives given by the local authorities.

Mr. George advised of the necessity of discussing the 85 percentile problem when the representatives of the various organizations meet and Senator Carson observed that rather than having a judge in attendance at the meeting as was mentioned, members of the law enforcement agencies be included to work in close proximity with them. He urged that existing

law and the proposed changes be examined closely as they may wish to present a different alternative. He advised them to examine whether or not two different groups setting speeds are of necessity, what the standards are, what rights the cities have and to place particular emphasis on criteria for changing speeds, which he hoped would come before the special session in February. Mr. George said he would attempt to meet with these different associations the early part of January.

It was the consensus of the members that sections 3 and 4 of the draft would not be considered further until such time as Mr. George reported back to the committee his recommendations.

Section 5. Designation of speed in complaint; speed trap evidence not admissible; use of radar; arrest without warrant in radar cases. Mrs. Embick explained the section deletes the reference to ORS 483.102 and substitutes the phrase "violating the basic speed rule."

Senator Carson voiced objection to the definition of "speed trap" and wondered if this definition covers what most Oregonians believe it to be, and whether it should remain in the statutes. Captain Williams stated that this method is still practiced in some states although he did not think it a proper method of policing. He said, however, there is a type of radar which uses the language described in the draft. Helicopters are employed in some states but from a practical standpoint have not proven very effective.

In answer to Representative Bunn's question, Captain Williams said that if this part of the statute were to be deleted, the State Police would at no time resort to the speed trap practice but would only implement the radar system. He thought that if a driver would appeal a conviction based on this type of evidence it would be reversed, but advised that if this definition were to be stricken, it would be necessary to modify the language to accommodate the radar practice. The language is obsolete, he said, except that the public is comforted by the fact there is a law which prohibits the use of the speed trap. Senator Carson pointed out the public may be totally unaware that almost every technique available is being used which are not, by definition, speed traps, and therefore their protection is a sham.

Captain Williams explained that all types of devices are being used, one of which is the "moving radar" for detecting speed of a car going in the opposite direction. Senator Carson wondered if all references to the speed trap were to be deleted it might result in smaller communities establishing their own programs for trapping the public. Captain Williams responded that this would not be the case with the State Police.

Mr. Paillette remarked that if the section were to be amended, subsection (1), as well as part of subsection (4) which is a probable cause arrest provision based on the radar unit, should be retained.

Senator Carson moved to delete subsections (2), (3) and the first two lines of subsection (4) of section 6.

Representative Bunn asked if most of the smaller communities have the use of radar and Captain Williams said that most cannot afford these units which range from \$1,000 to \$3,000. Representative Bunn next asked if the smaller communities would resort to the speed trap to enforce the speeds and was informed that they are presently pacing the cars.

Captain Williams asked Mr. Paillette if the Uniform Vehicle Code made any provisions for a change in the language which would still prevent distance timing and yet accomodate the vascar and was informed there are no provisions comparable to it.

The subcommittee recessed for lunch at 12:15 p.m. reconvening at 1:30 p.m.

Vote was taken on Senator Carson's earlier motion to delete subsections (2), (3) and the first two lines of subsection (4) of section 5.

Motion carried unanimously.

Mr. Paillette advised that with the deletions made to the section it leaves the provisions relating to the filing of the complaint and summons and also the provision that the officer may arrest on the basis of the radar check. He suggested the subcommittee ask Captain Williams of any other matters which should be considered in connection with the procedures involved in this area.

Senator Carson asked if Captain Williams would arrange a radar demonstration for the members in order that they might understand better what is being done. Captain Williams indicated he had already arranged for the use of the moving radar and the Department would also contact the Salem Police Department to ask permission for the subcommittee members to observe the needle in an unmarked car as it registers the vehicle speed. With the State Police and Salem Police units in use, the members would have the benefit of observing both, he said.

Referring to paragraph (b), subsection (4) of section 5, Captain Williams called attention to the provision which related to the license number of the vehicle and the recorded speed. From a practical standpoint, he said, attempting to set a radar unit in action and secure the license number of a vehicle going at a high rate of speed is extremely difficult and because of this the officers concentrate more on the make and color of the vehicle and the number of occupants and transmit this information by radio. Paragraph (b) states that the license number must be transmitted although he said because of weather conditions, dirty license plates and the high rate of speed it is often impossible for the officers to comply with this provision. Captain Williams requested that this portion of the paragraph be deleted but Senator Carson noted that this provision is a defense to the driver. Mr. Paillette remarked that it could be stated in terms of probable cause for making an arrest.

Senator Carson moved that paragraph (b), subsection (4) of section 5 be deleted and that it be replaced with probable cause language.

Representative Marx expressed the view that in certain circumstances there would be many vehicles on the highway and this provision would make certain the right vehicle was apprehended. Captain Williams stated that seldom is the license number too important in the officer's testimony and that the judge and jury are more interested in knowing how the officer was certain it was the right vehicle.

Mr. Paillette pointed out that paragraph (b) could be amended to say in substance that "based upon a description of the vehicle or other information received from the officer who has observed the speed of the vehicle recorded has probable cause to make the arrest."

Vote was taken on Senator Carson's earlier motion to delete paragraph (b), subsection (4) of section 5 and the language be replaced with Mr. Paillette's proposed amendment.

Motion carried unanimously.

Ms. Howard called attention to subsection (1) and suggested the insertion of the phrase "and the offense of speeding" following the word "rule" in line 5 and also the insertion of "maximum" before "speed" in line 7 in order to be consistent with the draft.

Senator Carson moved the above suggested amendment.

There being no objections, the amendment was adopted.

Representative Bunn moved the adoption of section 5 as amended.

Motion carried unanimously.

Section 6. Minimum speed regulation. Senator Carson noted that the section places the officer in a position where he must use a tremendous amount of judgment and although he believed it imperative to retain this provision, he asked Captain Williams for any suggestions as to how to improve the section and lessen the burden for the officer. Captain Williams explained that the law created during the 1971 session whereby slow moving vehicles must stay to the right and use certain safe turn-outs had helped relieve the situation but he said there are not adequate safe turnouts for the vehicles and a judgment must be made by the officer as to whether the driver is committing an offense if he drives at a slow speed as to impede or block the normal and reasonable movement of traffic.

Mrs. Embick reported that after the section was drafted, it had become apparent that both the Department of Transportation and the

State Speed Control Board would be setting minimum speeds and therefore an amendment had been drafted to subsection (2) to include the State Speed Control Board.

The Chairman remarked that even where there are turnouts, the drivers are not using them and asked Captain Williams what could be done to enforce this. Captain Williams related that the problem exists not so much because the drivers are not attempting to comply but it is in attempting to get to the driver who has the traffic blocked. Ms. Howard stated that during 1972 there were 606 convictions in the state for impeding traffic.

Representative Marx asked if there were any fixed signs which indicate a minimum speed limit and Mrs. Embick replied there has not been a provision in the statutes whereby a minimum speed could be set. This is a UVC provision adopted by 37 states including Washington, California and Alaska.

Senator Carson was concerned that the amendment to subsection (2) states that the Department of Transportation or the State Speed Control Board can set the minimum speeds whereas subsection (1) would allow each officer the discretion to set his own minimum speed at any given time. Mrs. Embick replied that there would not be too many highways on which the minimum speed would be appropriate to be set although it may be needed to cite someone for impeding traffic.

Ms. Howard called attention to ORS 483.114 and the fact that language contained in existing law had been deleted. The section has incorporated paragraph 1 but has dropped the exceptions. Mrs. Embick explained that the basic rule would not be repeated in all cases.

The Chairman asked what has been done with respect to farmers' tractors and highway plows driving at 5 mph, for instance. Captain Williams indicated that a slow moving vehicle emblem is required for vehicles traveling under 25 miles per hour and they also must make certain they are safe.

Captain Williams referred to subsection (1) and the phrase "A person commits the offense of violating the minimum speed regulation" and stated that this does change the operation of the section as far as impeding the normal flow of traffic. The "minimum speed regulation" would mean on all highways there would have to be a minimum speed set, he believed. Mrs. Embick explained that this was not the intent of the subsection and that it would mean there would be a violation if the driver was impeding traffic.

Ms. Howard commented that it was logical for subsection (2) to come before subsection (1). Mr. Paillette explained that subsection (1) was a general provision to apply under any circumstances and would leave it to the judgment of the officer irrespective of whether the minimum has been set under subsection (2) and is the approach taken by the UVC.

Captain Williams remarked that the language contained in the original section was adequate for this section and would get to the slow moving driver for impeding traffic. He asked if the language pertaining to minimum speed in subsection (2) would mean that in order to have a violation of subsection (1) it would be necessary to have a minimum speed set. Chairman Browne answered in the negative and stated that the arrangement set out in the draft is more practical because otherwise the burden would be placed on the Department of Transportation to post all highways with the minimum speeds and she believed it desirable to limit it to the particular situation they believe is necessary. Captain Williams contended that if the driver is issued a citation because of violation of the minimum speed he would immediately ask what that minimum speed was.

Mr. Paillette noted that under existing law the officer has no posted speed to look to although he understood where the problem was arising with the statement of the offense.

Mrs. Embick suggested the wording be changed to "slow." Mr. Paillette noted that the only offense created by the draft is contained in subsection (1). He did not believe subsection (2) gave authority to cite but merely allows the Department of Transportation to designate a minimum speed. He suggested the section be redrafted in terms of the offense which would be committed either under the general provision that such a slow speed is to block the normal and reasonable movement of traffic or at a speed less than what is set by the Speed Control Board or the Department of Transportation. Mr. Paillette was of the opinion the draft should state that if it is a posted minimum speed, the driver is in violation or if there is not a posted speed there would be the question as to whether it was a reasonable speed under the flow of traffic.

Mr. George indicated his concern with the last sentence in subsection (1) and spoke of situations which he believed would be excusable even though it would not be for "the safe operation or in compliance with law," such as the driver blocking the flow of traffic because his automobile was not in good repair and it was imperative to drive slowly or the farm truck or logging truck carrying a load that was not quite equal to the horsepower in the engine to pull a speed which would not block traffic. He told the committee that the insertion of subsection (2) of ORS 483.114 would eliminate this concern.

Mr. Sipprell referred to Ms. Howard's suggestion to place subsection (2) into ORS 483.106 and 483.108 and stated that these two statutes refer to establishing a lesser maximum speed than is provided by statute whereas section 6 concerns itself with the minimum speed and for that reason he would not favor placing the subsection in those statutes. Mr. Sipprell suggested inserting in line 2 of subsection (1) following "regulation" the phrase "when driving at a speed less than established pursuant to subsection (2) or"

When asked by the Chairman to present their views on the section, Ms. Howard stated that the language could be misleading to the public and Mr. George indicated that the minimum speed is an extremely difficult thing to determine and he did not believe it to be an engineering problem. There is the physical problem also of advising the driver and with respect to signing, he thought the Department would undoubtedly have to carry a double set of signs to properly advise the driver. Mr. Paillette indicated that the draft does not compel the Department to do this, only that it is authorized to do so.

Representative Marx wondered if a way could be found to set a 10 or 15 mph variation within the designated speed and make it a general rule as he pointed out that the driver going 40 mph in a 55 mph designated speed zone is a threat on a busy highway. Mr. George concurred with this and alluded to his earlier statement in that hazardous situations occur when there is a differential in speed. He said that if a statute is enacted involving this minimum speed, the situation could occur where some individual has a motor problem and legally may be subject to citation but actually shouldn't be. He again called attention to subsection (2) of ORS 483.114 which he said would cover this type of situation.

Mr. Dutoit voiced the opinion that small pickups with large campers are the greatest offenders in bogging down in the mountains and wondered if subsection (2) of ORS 483.114 would then allow these recreational vehicles the same provisions and Captain Williams responded that they are required by law to use the safe turnouts.

Mrs. Embick proposed changing the phrase "minimum speed regulation" in section 6 to "impeding traffic" inasmuch as this is really the offense.

Representative Bunn asked the rationale for retaining subsection (2) in the section inasmuch as subsection (1) allows the officer to use discretion in citing a driver if he believes there is a minimum speed problem. Mrs. Embick replied that the Department of Transportation and State Speed Control Board would need the authorization as there may be some highways which only certain vehicles should use. Slower vehicles would use highways where there was not a minimum speed posted. A minimum speed would apply only on highways where it would be unsafe to go slower.

Representative Bunn asked if any data had been obtained showing if California's minimum speed law has effectively kept those other vehicles off the highway. He said he was not anxious to have this provision if it would not solve the problem. The Chairman noted that this provision had been taken from the UVC and although the subcommittee would wish to stay as closely as possible to the Code, she would agree with Representative Bunn that there should be some logic to it.

Representative Bunn next asked Captain Williams if it would be of assistance to the State Police to have a minimum speed set in the method designated in subsection (2) and was told he could not respond to the question having had no experience patrolling an area where there was a sign designating a minimum speed. He was of the opinion that minimum speeds are a hazard and that if this were enacted he thought the freeways would be the only places where the speed would be posted and that perhaps they would act as a guide to persons driving too slowly. When asked by the Chairman if he thought subsection (2) should be limited to freeways and arterials he said that if the authority is given in the section, the agencies involved could place these speed restrictions in any given area when they felt the need arose and that it wasn't necessary to restrict them to any particular highway.

Ms. Howard observed that 37 other states have provisions for establishing minimum speed limits and there must be some value in giving this authorization to the appropriate agencies, even though they may not use it. Mr. George expressed interest in securing information from the other states involved as to how many actually post and enforce this law as he would be uneasy having such authority. Captain Williams volunteered to correspond with law enforcing agencies in some of the representative states to obtain this information for the members.

Representative Bunn moved to amend subsection (1) of section 6 by inserting subsection (2) of ORS 483.114 following "or" in line 5 and deleting "in compliance with law" in line 6.

Speaking on his motion, Representative Bunn said that while any person can use a defense under section 6 as stated earlier by Mr. Paillette, the only defense he believed they could use would be that they necessarily had to go slower for "safe operation or in compliance with law" and the defendant will be required to plead guilty because there was not a defense to take into account the valid problem he actually had.

Mr. Paillette asked the meaning of "necessarily" in subsection (2) of ORS 483.114 and Captain Williams explained that it is a judgment called on the officer's part, such as when following too closely.

Representative Bunn contended that the amendment would say that the officer still has the complete discretion to cite under every instance but that once the citing has taken place, if the citizen has a valid reason for going at a slower speed, he will not be required to plead guilty.

Senator Carson agreed there should be a provision for an existing emergency and suggested that an emergency provision be written into

the statute showing that there are peculiar circumstances where the driver could go slower in an emergency. Mr. Paillette agreed that this term was preferable to "necessarily."

Vote was taken on Representative Bunn's earlier motion to amend subsection (1) of section 6 and which also would embody the concept of "emergency."

Motion carried unanimously.

With respect to subsection (2) Mr. Paillette noted that it was necessary to consider whether the draft should give the agencies involved the authority to set minimum speeds and how it should be organized. He agreed with Ms. Howard's previous statement that the contents of the subsection should be placed in a separate section. Subsection (1) could be made a separate section, he said, and state that the offense is committed either by driving at a speed slower than is normal or reasonable or at a speed slower than that designated.

Senator Carson suggested that the subsection be placed in ORS 483.106 and 483.108 and that it be redrafted so as to place the violation of the law before the creation of the committee. He believed sections were needed to deal with the Department of Transportation and the State Speed Control Board, which could be considered administrative sections, and followed with Mr. Paillette's suggestion with respect to subsection (1) which would be the impeding traffic regulation section.

Senator Carson moved that the subcommittee adopt as a policy matter the mechanics for establishing a minimum designated speed on roadways selected by the Department of Transportation and State Speed Control Board, such roads not necessarily to be statewide.

Voting for the motion: Carson, Marx, Chairman Browne. Voting no: Bunn.

Section 7. Maximum speeds for vehicles equipped with solid or metal tires. Mrs. Embick explained that it was not intended for the section to make any substantive change in existing law but merely to state the offense and set forth what the violation is in terms of culpability. ORS 483.116 would be repealed.

Senator Carson asked the rationale for retaining the section and Captain Williams reported that law enforcement personnel do not use this law but he believed its original purpose was to prevent damage to the highways because of heavy weights. Senator Carson thought if the statute is retained it should be placed in the PUC section.

Senator Carson moved subsections (1) and (2) of ORS 483.116 be repealed.

Motion carried unanimously.

Senator Carson asked that the staff be directed to inform the Department of Transportation, State Police and Public Utilities Commission of this amendment in order that they may desire to amend the PUC Code or some other section.

Section 8. Maximum speeds for motor busses, highway post-office busses, school and worker transport busses. Mrs. Embick called attention to the amendment proposed to the section and the additional language which establishes the speeds which have been designated. She recalled that at its last meeting the section was amended to give interstate busses the basic rule provision, although this amendment had not yet been drafted. Mrs. Embick commented that she had conversed with Mr. Hagen of the PUC staff concerning proposed language which could be used and whether there was in fact a distinction between the intra-state and interstate and that Mr. Hagen had suggested the draft contain the language "those busses having a certificate of public convenience and necessity issued by the Public Utilities Commissioner or by the ICC." She explained that Mr. Hagen had indicated this language would be appropriate for applying sections 1, 2 and 3 to those busses which have part-time drivers, etc. There are some interstate busses which have not received a certificate of public convenience from the PUC.

Senator Carson asked those in attendance from the different bus companies if they were satisfied with this proposal in order to qualify as a passenger car. Without these requirements he said they would only qualify as a truck. Mr. Staats stated his company would consider this a satisfactory arrangement. Mr. Mattingly suggested that the draft be limited to interstate busses which operate over a three-state area and which would thereby rule out some of the smaller bus lines. He gave as an example the Evergreen Bus Line which operates in Oregon and Washington and which would be ruled out if there was this three-state provision included.

Captain Williams wondered how the law enforcement personnel would distinguish whether or not the busses would have this certificate and Senator Carson asked that, rather than trying to draw a distinction between busses, bus speeds be set, with the privilege of the affirmative defense extended to the drivers. Mr. Mattingly expressed agreement to this approach.

Chairman Browne recapitulated the events of the morning's meeting in that the subcommittee had passed the basic rule with a 55 mph speed and the affirmative defense over that speed. It was also the decision of the members not to set a maximum speed. She asked if the bus company personnel were content with the draft as it now stands.

Mr. Ross commented that their original position was to remove the restrictions now placed on them and to put them in the same category as passenger car drivers. They are in agreement with the draft as proposed, he said.

Senator Carson moved that section 8 be amended to remove any reference to motor busses and highway post-office busses from the maximum speed provision and place them in the section which would allow them the privileges of the passenger car driver and the affirmative defense.

Mrs. Embick stated that the definition of vehicle which will be used will include a motor bus and post-office bus. Senator Carson noted that by removing these busses from the maximum speed section it would have the effect of restoring them to the passenger vehicle section, but advised the staff that if this is not so, the draft should be corrected.

Senator Carson moved to delete subsection (3) of the proposed amendments to section 8 dated December 1973.

Motion carried unanimously.

The Chairman advised the bus personnel that the recommendation which will be made by the subcommittee on the entire draft will be presented to the full committee in January. She pointed out that the approval of the subcommittee is not final but is subject to approval by the entire committee and that perhaps the witnesses may wish to attend these meetings.

Senator Carson urged caution by the bus drivers inasmuch as even though the 75 mph would only be in eastern Oregon, he believed that if the drivers were going at 76 mph and raised the affirmative defense that this was a safe speed under certain circumstances, the conviction rate would climb even higher than 97%. Captain Williams indicated that one of the problems of busses and trucks is their size and that studies have been made showing a definite hazard having the heavy vehicles on the highway. Complaints made by the motoring public from the spray of the busses and trucks going this higher speed probably will increase. In response to this, it was pointed out that the busses are throwing almost as much spray by traveling at 45 mph as they would in traveling at the higher speed but Captain Williams asserted that they would be passing more vehicles even though these other vehicles would also be traveling at this higher speed. Senator Carson commented that he believed some innovative and good changes were being made but that these are the arguments which would be debated during the 1977 legislative session.

Mrs. Embick reported that the remainder of section 8 sets the absolute speed limits for school busses and worker transport busses which are embodied in subsections (3) and (4) of ORS 483.116 and which are set at 55 mph.

Mr. Paillette pointed out that editorial changes would be made to the section with respect to reference to ORS 483.104.

Senator Carson moved the adoption of section 8 as amended.

Motion carried unanimously.

Senator Carson called attention to subsection (6) of section 8 which states that the section does not apply to ambulances or hearses. Mr. Sipprell explained that the provision was placed in the statutes inasmuch as any vehicle in excess of 6,000 pounds was classed as a motor truck and that ambulances and hearses are often in excess of 6,000 pounds. Senator Carson remarked that although ambulances had been given special consideration, hearses had not and if they weigh over 6,000 pounds and are in fact considered a truck, he thought they should travel at truck speed.

Mr. Dutoit commented that although they would be considered a truck at this weight there are occasions where they do not reach the 6,000 pounds and they are entitled to drive at highway speed.

Mr. Sipprell said the rationale for the 6,000 pound limit was because of the damage done to the highways due to the weight and is considered the basic limit between the passenger vehicle with the \$10 license plate as opposed to the heavier vehicle which pays a graduated license or registration fee and which is also subject to a weight mileage tax. As the section relates only to speed, he said it would have no effect on placing this mileage tax on the hearses if they were exempted in the draft.

Senator Carson moved the deletion of the words "or hearses" in subsection (6) of section 8.

Motion carried unanimously.

Section 9. Speed on public bridge, causeway or viaduct. Mrs. Embick explained that ORS 483.118 was amended to substitute the "Department of Transportation" for "commission" and contains a restatement of the offense. Under existing law the Department is authorized to set special maximum speeds on these structures and this provision is not altered.

Representative Marx was of the opinion the section was unnecessary as he believed the Department already has the authority to reduce speeds. Mrs. Embick indicated that under ORS 483.106 and 483.108 these speeds can be varied. Senator Carson noted that under section 9 there is no affirmative defense provision and is the first element considered by the subcommittee with respect to an absolute maximum speed. Representative Marx stated that the Department would have already taken all the criteria into consideration before it set this maximum speed.

Senator Carson suggested that rather than having a special statute, this provision could be stated under ORS 483.106 and 483.108 and the

speeds on the bridges and viaducts could be set by the Department of Transportation or the State Speed Control Board.

Mr. George said this authority is used by the Speed Board in emergency cases where there has been some damage done to the structures and it is also used occasionally in cases of narrow structures where one-way traffic and speed limits might be imposed. He concurred that this could be accomplished under ORS 483.106 and 483.108.

Representative Marx moved that ORS 483.118 be repealed.

Motion carried unanimously.

Mr. Paillette suggested that the commentary indicate that the intent of the subcommittee is that this type of provision would be considered under ORS 483.106 and 483.108.

Section 10. Speed races prohibited on public ways; publishing or advertising results. Mrs. Embick reported that the section is a revision of ORS 483.122 which prohibits, in brief terms, speed races and advertising when in violation of the law and is drafted along the provisions of the UVC. She believed it appropriate to define racing and drag racing, the definitions of which are contained in subsections (1) and (2). Attention was called to subsection (5) which has been taken from subsection (2) of ORS 483.122 and which relates to the advertising and publishing aspects and Mrs. Embick advised that this provision is not contained in the UVC or in other states but was placed in the draft for the committee's consideration.

Captain Williams remarked that although the language has been clarified he was concerned over subsection (7) and the language "commonly known as rallies" and wondered if it was necessary to place this language in the statutes as he thought persons could take advantage of it. Mrs. Embick said the subsection was taken in part from subsection (4) of the Idaho Code (page 20 of the draft) and the word "rally" was inserted to state squarely what was not being prohibited. The phrase "where speed or acceleration is not the objective" was intended to define what a rally is, she said.

Senator Carson proposed that the commentary state that it was not intended to include this type of situation and moved that subsections (5), (6) and (7) of section 10 be deleted.

Motion carried unanimously.

Senator Carson moved the adoption of section 10 as amended.

Motion carried unanimously.

Section 11. Maximum speed on ocean shore. Mrs. Embick stated the section amends ORS 483.124 and called attention to the proposed amendments which reverse the order of subsections (2) and (3). The offense of speeding on the ocean shore is stated in subsection (1) and the amended subsection (2) would authorize the Department of Transportation to set a lesser speed limit. Subsection (3) contains the penalty provision. She advised that the section sets an absolute speed limit on the ocean shore and has an added provision that an emergency vehicle and an ambulance may exceed the limit subject to the provisions for emergency vehicles.

Ms. Howard inquired what kind of engineering and traffic investigation would be done on the ocean shore as is stated in amended subsection (2) and whether the basis for the decision to set a minimum speed could be something other than an engineering or traffic investigation. Ms. Howard thought that the public safety is of more concern than the traffic investigation and suggested that rather than have the determination based on engineering and traffic investigation the section be stated in terms of public safety.

Mr. Sipprell suggested that this could be accomplished by deleting the words "engineering and traffic" leaving the draft to state "upon the basis of an investigation"

Representative Bunn moved subsection (2) of section 11 be amended to delete "engineering and traffic" in line 2 of the proposed amendments.

Motion carried unanimously.

Mr. Sipprell proposed the new language in subsection (1) be amended in lines 4 and 5 as follows: " . . . if he drives a vehicle or conveyance on any part of the ocean shore in this state at a speed greater than 25 miles per hour [on any part of the ocean shore] or at a lesser speed as may have been posted pursuant to subsection (3)."

Senator Carson moved the above proposed amendment to subsection (1) of section 11.

Motion carried unanimously.

Mr. Paillette remarked that Preliminary Draft No. 1 should be reviewed again later by the subcommittee because of the amendments and the additional material to be presented by Mr. George with respect to sections 3 and 4. Mr. George advised that he would contact the various organizations as suggested and he would hope to have this information available before the next meeting of the subcommittee on January 11.

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

Respectfully submitted,

Norma Schnider, Clerk
Subcommittee on Revision

COMMITTEE ON JUDICIARY

Subcommittee Amendments to

Speed Restrictions
Preliminary Draft No. 1

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

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

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

(a) Twenty miles per hour:

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

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

- (C) In any business district.
- (b) Twenty-five miles per hour:
- (A) In any residence district.
- (B) In public parks, unless a different speed is designated by state or local authorities, as authorized by law, and duly posted.
- (c) Fifty-five miles per hour in other locations.
- (2) A person who drives a vehicle at a speed greater than any of the speed limits specified under subsection (1) of this section commits the offense of speeding.
- (3) Speeding is a _____.

Section 3. (Speeding; affirmative defense.) (1) Except as otherwise provided in subsection (2) of this section, it is an affirmative defense to the offense of speeding that, having due regard to the traffic, weather, highway and other conditions then existing, the speed at which the person was driving was reasonable and prudent.

(2) The defense described in subsection (1) of this section shall not be available to a person who commits the offense of speeding by driving at a speed greater than 75 miles per hour.