

Tape 2 - Side 1 - 300 to 575  
          Side 2 - 1 to 578  
Tape 12 - Side 1 - 1 to end  
          Side 2 - 1 to 294

COMMITTEE ON JUDICIARY

Second Meeting, April 9 and 10, 1974

Minutes

April 9, 1974

Senate Members Present: Senator Elizabeth W. Browne, Chairman  
                          Senator Wallace P. Carson, Jr.

Excused: Senator George Eivers (Present during  
          afternoon session)

Absent: Senator John D. Burns

House Members Present: Representative George F. Cole, Chairman  
                          Representative Stan Bunn  
                          Representative Lewis B. Hampton  
                          Representative Robert P. Marx  
                          Representative Norma Paulus

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

Others Present for All     Mr. Gil Bellamy, Administrator, Traffic Safety  
or Part of the Two-Day     Commission  
Meeting:     Lt. Andy Crabtree, Traffic Division, Portland  
                  Police Bureau  
                  Mr. James Dutoit, Automobile Club of Oregon  
                  Mr. L. E. George, Traffic Engineer, Department  
                          of Transportation  
                  Miss Vinita Howard, Public Information and  
                          Publications, Motor Vehicles Division  
                  Mr. Douglas Moore, Deputy Legislative Counsel  
                  Mr. Ralph Sipprell, Liaison Engineer,  
                          Department of Transportation  
                  Mr. Edward Warmoth, Washington County Traffic  
                          Safety Coordinator  
                  Capt. John Williams, Traffic Division Oregon  
                          Department of State Police

	<u>Page</u>
Agenda: Staff Report	2
<u>Speed Restrictions; Preliminary Draft No. 3;</u> <u>April 1974</u>	3 16
Amendment to Committee Rules Governing Senate Members	15
<u>Traffic Signs, Signals and Markings;</u> <u>Preliminary Draft No. 2; March 1974</u>	18
<u>Driving on Right Side of Roadway;</u> <u>Overtaking and Passing; Use of Roadway;</u> <u>Preliminary Draft No. 2; March 1974</u>	26
<u>Right of Way; Preliminary Draft No. 2;</u> <u>March 1974</u>	40

The meeting was called to order at 10:00 a.m. in Room 14, State Capitol, by Senator Elizabeth W. Browne, Presiding Chairman.

Approval of Minutes of Meeting of September 12, 1973

Rep. Paulus moved approval of the minutes of the meeting of the full committee on September 12, 1973. There being no objection, the minutes were approved as submitted.

STAFF REPORT

Tentative Outline of Rules of the Road. Mr. Paillette called attention to a tentative outline of the Rules of the Road, a copy of which is attached to these minutes as Appendix A. It was not, he said, intended to be a final outline nor was it meant to serve as a table of contents. Its purpose was to give the members a general idea of what the Rules of the Road portion of the Motor Vehicle Code revision would contain when completed.

Subcommittee Activities. Mr. Paillette advised that the Subcommittee on Revision had thus far held 11 meetings dealing with the drafting of the Rules of the Road.

The Subcommittee on Adjudication had met four times. Two of those meetings were held jointly with judges -- one with a cross-section of municipal judges from various parts of the state and the other with the Minor Courts Committee of the Oregon Judicial Conference. This subcommittee had been examining alternatives with respect to adjudication methods for dealing with traffic offenses. District

courts and district attorneys in eight selected counties from throughout the state had been submitting monthly statistical reports to the State Court Administrator's office and those figures, showing activities with respect to motor vehicle offenses for the first quarter of this year, should be available about April 15.

The Consulting Committee, with Judge Schwab serving as Chairman, had held four meetings, the last two dealing with a proposed approach to adjudication of traffic offenses. An initial draft had been reviewed, was now in the process of revision and, when approved by the Consulting Committee, will be submitted to the Subcommittee on Adjudication for consideration.

SPEED RESTRICTIONS; Preliminary Draft No. 3; April 1974

Chairman Browne indicated that HJR 11 under which this committee operated required approval of a motion by a majority of the House members and a majority of the Senate members. Because just two of the four Senate members were present at this morning's meeting, she ruled that votes would be recorded for the two members who were present and the third vote would be cast by Senator Eivers when he arrived for the afternoon session.

Mrs. Embick explained that the committee would take up the Articles in the Rules of the Road revision in approximately the order in which they appeared in the Uniform Vehicle Code except that the initial Article on General Provisions was being temporarily by-passed. It had become apparent during work in the subcommittee that the General Provisions, although already drafted, would need to be supplemented to take care of a number of additional questions that had arisen.

Chairman Browne indicated that the subcommittee members would attempt to flag for the full committee the sections that did not come out of subcommittee with unanimous approval.

Section 1. (Basic speed rule.) Section 2. (Maximum speeds.)  
Section 3. (Speeding; affirmative defense.) Mrs. Embick advised that section 1 of the Speed Restrictions Article contained a restatement of Oregon's basic speed rule and was set out in the format to be followed throughout the revision; namely, there was first a statement of the offense followed by a subsection classifying the violation of that offense. She suggested that sections 1, 2 and 3 be considered together.

Section 1, Mrs. Embick explained, was the same as ORS 483.102 except for the addition of "weather" and "visibility." Sen. Carson commented that one of the basic objectives of the subcommittee was to make the statutes as clear and definitive as possible, and this was one of the reasons for adding those two words.

Mrs. Embick advised that section 2, designating speed limits for various types of areas, contained a major departure from ORS 483.104 in that it used the term, "maximum speeds," in place of "designated speeds." Furthermore, ORS 483.104 specified given distances and the subcommittee had deleted them here as well as in subsequent draft sections on the ground that it was impracticable to require a driver to measure a specific number of feet from one indefinite point to another. Section 2 also designated a maximum speed for alleys, a provision not included in either the present Oregon code or the Uniform Vehicle Code. She pointed out that the designation of the offense in subsection (3) of section 2 was called "speeding," an offense which heretofore did not appear in Oregon law. Speeding as such is now a "violation of the basic rule."

When a driver is cited for speeding, section 3 would then come into play by providing for an affirmative defense. The defendant would have an affirmative defense to the offense of speeding as defined in section 2 if he could show that the speed at which he was driving was reasonable and prudent under the existing conditions. The affirmative defense was the same as that defined in the new Oregon Criminal Code (ORS 161.055). Sen. Carson added that section 3, in effect, placed a greater burden on the defendant by requiring him to prove his innocence than did the present law which required him to overcome a prima facie case. He noted also that under existing law statistics showed a 97% conviction rate for violation of the basic rule and he did not expect that the proposed law would result in an appreciable difference in that conviction rate.

[Note: A further explanation of the basic speed rule as proposed in this draft appears on pages 29 and 30 of these minutes.]

Chairman Browne asked if section 3 would make it necessary to serve notice that the affirmative defense was going to be raised by the defendant. Mr. Paillette replied that ORS 161.055 (2) defined "affirmative defense," and it was his opinion that procedurally the defendant would not have to give notice. If it were a straight "defense," he would, but for an "affirmative defense," he would not. Sen. Carson suggested that the commentary be supplemented to reflect that fact, and Chairman Browne concurred.

Rep. Hampton advised that he was not completely satisfied with the approach set out in section 3 and said he would be in favor of at least trying an absolute fixed speed without the affirmative defense feature.

Speaking to section 2 (1) (b) (B), Rep. Hampton asked if there were many citations issued for speeding at railroad grade crossings under present law. Capt. Williams said there were very few, if any, although speeding at those locations might be a factor in making a basic rule case against a person who went over a grade crossing while speeding on a highway.

Rep. Hampton commented that technically a driver was always "approaching" a grade crossing. It should be clear that "approaching" meant within a distance which would make either the vehicle a hazard to the train or vice versa. Chairman Browne asked Rep. Hampton if a statement in the commentary to that effect would satisfy his concern and received an affirmative reply. Sen. Carson commented that this subject had been discussed by the subcommittee and the alternative was putting in an abstract figure such as "100 feet," an approach they had decided against for the reasons explained earlier by Mrs. Embick.

Rep. Hampton next stated that in the same subparagraph the statement relating to a crossing where the driver's view was obstructed imposed upon the driver the anomaly of a duty to hold down his speed when he should have apprehended that which he could not see. Perhaps what the paragraph meant, he said, was that where there was some kind of sign warning of a crossing, at that point the driver should be aware of the crossing and slow down even though he could not see the crossing itself. Chairman Browne advised that another portion of the revision dealt with signs and this particular provision was designed to tell the driver what he was supposed to do when no sign was posted.

After further discussion, Sen. Carson suggested eliminating the subparagraph altogether. The attempt to deal with all grade crossings in one section, he said, might create further problems by requiring traffic to slow to 20 miles per hour for every crossing, even those where a driver could clearly see for miles in each direction that no hazard existed at the time of his crossing. This could result in unduly slowing traffic on some of the state's highways. Where there was a particularly dangerous crossing, a stop sign could be installed.

Capt. Williams was asked for his opinion, and he indicated that the question of whether or not to include (1) (b) (B) was academic because almost without exception stop signs were erected in areas where there was a hazardous intersection caused by an obstruction.

Mr. George expressed the view that it would do no harm to delete subparagraph (1) (b) (B). The Highway Division, he said, had not signed grade crossings for 20 mph anywhere in the state so far as he knew, and it had caused no problem. Most drivers, he said, were unaware of the requirement to reduce speed to 20 mph at a restricted sight crossing.

Rep. Hampton asked if the term "grade crossing" included a highway crossing as well as a railway crossing. Sen. Carson said he believed that subparagraph (B) contained a typographical error in that it should read "grade crossing of a railway" rather than "or a railway."

Rep. Cole moved to delete subparagraph (B) of paragraph (b), subsection (1), section 2. Motion carried unanimously. Voting: Sen. Carson, Chairman Browne. Reps. Bunn, Hampton, Marx, Paulus, Chairman Cole.

Rep. Cole called attention to section 2 (1) (b) (A) which referred to speed in school areas when children were present, his concern being that this would not cover times when elderly or blind persons were in the crosswalk. Mr. Paillette explained that general provisions dealing with all crosswalks appeared in another Article on rights of pedestrians and there was also a separate Article directed to blind persons.

Sen. Carson advised that subparagraph (1) (b) (A) was the provision passed by the 1973 legislature and with all its faults he believed it was superior to the old law requiring slower speeds during "school hours" which had raised numerous questions. Some of the most severe problems, he said, occurred at crosswalks where many school children crossed but which were not within sight of the school itself.

Rep. Marx recalled another statute which said that when a person was present in a crosswalk, the driver must stop whereas this section said that when children were present in a crosswalk, the driver must slow to 20 mph. Mrs. Embick explained that the intent of section 2 was to say that when children were in the vicinity of the crosswalk, speed was limited to 20 mph. It was not intended to mean that a driver need not stop when a child was actually in the crosswalk.

Capt. Williams said state police officers had been instructed that the 1973 law referred to a "school crosswalk" because of the areas where there were school crosswalks not contiguous to a schoolground. He suggested limiting this section to a school crosswalk as opposed to other crosswalks.

Rep. Hampton proposed to change "children" to "persons" in subparagraph (1) (a) (A). Sen. Carson noted that there was another Article dealing with crosswalks generally, and he would object to dropping all crosswalks to 20 mph by amending this section because this provision was intended to say that a driver should use an extra measure of care when children were present.

After further discussion, Rep. Bunn moved to insert "school" before "crosswalk" in subparagraph (A) of subsection (1) (b) of section 2 so it would read:

"When passing school grounds when children are present, or a school crosswalk when children are present, if notice of the grounds or crosswalk is indicated plainly . . . ."

Rep. Bunn's motion to amend was adopted by unanimous consent.

Rep. Hampton asked if "school crosswalk" was defined and was told by Mr. Paillette that it was not at the present time but a definition could be added.

Rep. Hampton reiterated his position that he was not prepared to vote for section 3 because he favored a strict maximum speed law such as that in the State of Washington.

After further discussion, Rep. Cole moved the adoption of section 1 as drafted and section 2 as amended. Motion carried. Senate members voting for the motion: Sen. Carson, Chairman Browne. House members voting for the motion: Reps. Bunn, Hampton, Marx, Paulus, Chairman Cole.

[Note #1: Upon Sen. Eivers' arrival following the noon recess, he first voted to approve sections 1 through 8 of this Article (see page 10 of these minutes), then rescinded his approval (see page 16). This motion nevertheless carried in view of the committee rule adopted at this meeting that two Senate votes were sufficient to carry a motion (see page 16).]

[Note #2: Section 1 was subsequently discussed in connection with the committee's consideration of section 11 of the Speed Restrictions Article. Discussion begins on page 13; vote on amendment and repassage of section 1 as amended appears on page 17.]

Rep. Cole then moved to adopt section 3 with the understanding that the commentary would be expanded to include a statement that no notice would be required by the defendant that the affirmative defense was going to be raised by him at trial. Motion carried. Senate members voting for the motion: Sen. Carson, Chairman Browne. House members voting for the motion: Reps. Bunn, Marx, Chairman Cole. Voting no: Reps. Hampton, Paulus.

[Note #3: Upon Sen. Eivers' arrival following the noon recess, he first voted to approve sections 1 through 8 of this Article (see page 10 of these minutes), then rescinded his approval (see pages 15 and 16). Section 3 was subsequently discussed in connection with the committee's consideration of section 11 of this Article. Vote on amendment and repassage of section 3 as amended appears on page 17.]

Section 4. ORS 483.106. (Special speed limits set by the Transportation Commission.) Section 5. (State Speed Control Board; appointment, vacancy, compensation and expenses of certain members.) Section 6. (Powers and duties of State Speed Control Board.) Following Mrs. Embick's explanation of sections 4, 5 and 6, Rep. Hampton asked what had brought about the split of authority for setting speeds between the Transportation Commission and the State Speed Control Board. Mrs. Embick explained that the Transportation Commission was authorized to alter the speeds on state highways only. The State

Speed Control Board was given the responsibility of setting speeds on all other highways in the state which included state highways within the corporate limits of a city, other city streets, county roads and those roads under the domain of a federal agency such as BLM forest roads. The purpose of the Speed Control Board, she said, was to assure uniformity of speeds in different towns and cities which might not be the case if each entity set its own speeds.

Rep. Hampton asked Sen. Carson if he would be in favor of giving all this authority to the Transportation Commission rather than splitting part of it off to the State Speed Control Board. Sen. Carson said he would oppose that arrangement. He explained that one of the purposes of the board was to insure that local authorities were given ample opportunity to make their views known and this was reinforced by the change in board membership proposed by section 5.

Rep. Cole asked if the existing Speed Control Board had operated satisfactorily as far as local governments were concerned. Chairman Browne said that her section of the state felt they did not receive as much cooperation as they might. Under the present code local authorities could only request investigations and the board had discretion to comply with the request. The subcommittee had attempted to rectify this situation by providing in section 5 that the board shall make an investigation when so requested.

Rep. Paulus moved adoption of sections 4, 5 and 6.  
Motion carried. Senate members voting for the motion: Sen. Carson, Chairman Browne. House members voting for the motion: Reps. Bunn, Hampton, Marx, Paulus, Chairman Cole.

[Note: See Note #1 on preceding page.]

Section 7. ORS 483.112. (Designation of speed in complaint; use of radar; arrest without warrant in radar cases.) Mrs. Embick advised that there was a prohibition in existing law against admitting evidence of the speed of a vehicle based on the use of a speed trap. This had been deleted in the draft along with the subsection relating to use of a speed trap. The reason for the deletion was it appeared that what was being prohibited, both use of a speed trap and the use in evidence of the results therefrom, was a rudimentary device for measuring the speed of a vehicle as set out in ORS 483.112, subsection (3). There appeared to be no logical basis for the distinction between that provision and the provision of subsection (4). The result of these deletions was that a device for taking the speed of a driver could be used under the proposed section 7.

With respect to subsection (2) (b), Mrs. Embick advised that the subcommittee had been told that it was a practical impossibility to obtain the license number of a speeder in some cases, and the purpose of the subsection was defeated by including that requirement. The underscored sentence was therefore substituted for that provision.



Rep. Hampton questioned the use of the term "recorded" in paragraph (2) (b) and suggested that "indicated" might be a more accurate term if units were used that employed a needle indicator as opposed to a record of a more permanent nature. Capt. Williams said there were various types of units in use, some of which actually made a print-out, some giving a digital reading and others indicating speed by a needle indicator. "Recorded," he said, had not caused a problem in existing law. Mr. Paillette suggested that commentary would be helpful in this instance rather than amending the statute inasmuch as it had not raised a question in the past. Rep. Hampton and other members of the committee concurred.

Rep. Cole pointed out that the State of Washington used planes for speed enforcement which timed vehicles by stopwatch. The stopwatch would not be an electrical device, he said, and asked if enforcement of that kind was contemplated in Oregon. Capt. Williams replied that as an enforcement tool it was worthy of study and had been discussed, but the cost factor posed a serious deterrent.

Rep. Hampton moved the adoption of section 7. Motion carried. Senate members voting for the motion: Sen. Carson, Chairman Browne. House members voting for the motion: Reps. Bunn, Hampton, Marx, Paulus, Chairman Cole.

[Note: See Note #1 on page 7 of these minutes.]

Section 8. (Impeding traffic.) Chairman Browne noted that there was a split of opinion in the subcommittee on section 8. Some of the members felt there should be a minimum as well as a maximum speed, but the majority adopted the section in the form in which it appeared in the draft.

Mrs. Embick noted that UVC s 11-804 (b) set out a model minimum speed provision which was considered by the subcommittee. Section 8 was a restatement of ORS 483.114 and classified as a violator the person who impeded traffic by driving at such a slow speed that other traffic was impeded or blocked. The present law, she said, applied only to a driver on an "arterial highway," a term not defined in existing law. Section 8 extended the violation to any highway.

Rep. Hampton expressed concern for the elderly driver on the freeway who, because of his physical condition or the condition of his car, might decide that 35 mph was the safest speed at which he could proceed in compliance with law. Chairman Browne explained that the phrase, "in compliance with law," referred to an officer on the road directing traffic.

Mrs. Embick advised that section 8, when considered in conjunction with a subsequent section dealing with position on the roadway, would mean (1) a person such as the one described by Rep. Hampton might not

properly be on the freeway or (2) in some instances he would be taken care of by another rule which the committee would later be considering requiring slower vehicles to stay in the right lane.

Rep. Hampton asked if a minimum speed would be enforceable. Capt. Williams said he had asked California officials that very question and was told that thus far the minimum speed there had been effective and was not difficult to enforce. Rep. Hampton asked if the need for a minimum speed was primarily on the freeway or in the cities and was told by Sen. Carson that the freeway was where it would be used most often.

Lt. Crabtree, in response to Chairman Browne's request for comment on the need for a minimum speed in the metropolitan area, reported that no problem existed in that area so far as he knew, even where freeways traversed the city limits.

Rep. Hampton asked who would set a minimum speed and was told by Chairman Browne that it would be set by the same authorities who set the maximum speeds, and the highways would then be posted in the same manner as for maximum speeds. Mr. Paillette added that section 8 of the draft did not set up a minimum speed and there would be no posting under the proposed section except that it would be complimentary to other sections requiring slow drivers to move to the right and to pull off the highway to let faster traffic pass when there was a convenient turn-out. In reply to a question by Rep. Cole, Mr. George advised that there were signs to that effect in many portions of the state.

Rep. Bunn moved adoption of section 8. Vote was taken of House members only. Motion carried unanimously with all five House members voting. (See vote of Senate members set out below.)

Rep. Hampton requested that the commentary contain a statement that the phrase, "in compliance with law," as used in section 8 was intended to refer to an officer directing traffic as explained by Chairman Browne. The Chairman so ordered.

The committee recessed for lunch and reconvened at 1:30 p.m. with all members present except Sen. Burns.

Chairman Browne explained to Sen. Eivers, who was not present for the morning session, the action taken by the committee that morning.

Sen. Carson moved that the Senate members approve sections 1 through 8, as amended, of the Speed Restrictions Article. Motion carried unanimously. Voting: Sens. Carson, Eivers, Chairman Browne.

[Note: Sen. Eivers later rescinded his approval of section 8 of this Article (see page 16 of these minutes). The motion to approve section 8 nevertheless carried in view of the committee rule adopted at this meeting that two Senate votes were sufficient to carry a motion (see page 16).]

Section 9. (Maximum speeds for motor trucks, school and worker transport busses.) Following Mrs. Embick's explanation of section 9 as set forth in the commentary to that section, Chairman Browne advised that the subcommittee had heard considerable testimony concerning the training, skill and low accident rate of drivers of commercial busses such as Greyhound and Trailways and the relationship of the number of citations they received to holding their jobs. For that reason busses of that type were excluded from the provisions of section 9.

Rep. Cole said a number of churches in his area were using old school busses to transport children to Sunday School and other church-related activities. Busses used for that purpose would not fall into any of the classifications in section 9 and would therefore not be subject to any special speed restriction. Mrs. Embick advised that under present law they would be subject to the speed limits for "motor busses."

Chairman Browne recalled that the 1974 Special Session passed an exclusion for non-profit organizations who rented busses for excursions. It would apply, for example, to a busload of 50 elderly citizens with the driver having only a chauffeur's license. Busses in that category, she said, should not be included in the exclusion applicable to Greyhound busses. Miss Howard commented that the bill referred to by the Chairman subjected those vehicles to the same safety code as worker transport busses and it might be appropriate to include them as well as converted school busses in paragraph (c) of subsection (1) of section 9.

Rep. Cole moved that busses such as he described (school busses used for transporting children to Sunday School) and busses rented by nonprofit organizations covered by Chapter 38, Oregon Laws 1974 (Special Session), be included in the definition of "worker transport bus" in section 9 (1) (c) in order to make them subject to the speed limitation described in that section. There being no objection, the motion carried.

Rep. Cole moved the adoption of section 9 as amended. Motion carried unanimously. Voting: Sens. Carson, Eivers, Chairman Browne. Reps. Bunn, Hampton, Marx, Paulus, Chairman Cole.

Section 10. (Speed races prohibited on public ways.) Mrs. Embick explained that section 10 would repeal ORS 483.116. She noted that ORS 483.122 said that a manufacturer, distributor or dealer who advertised results of a race in which the speed of the race exceeded allowable

speeds would be subject to a violation. This provision appeared to be unrelated to the Rules of the Road and was therefore deleted.

Rep. Hampton indicated that Multnomah County had experienced difficulty in sustaining speed contest prosecutions because of problems in proving that a race actually occurred. Capt. Williams agreed that there had been difficulty with prosecutions in this category. The State Police, he said, had found it easier to enforce the law in situations where two drivers were dragging down the highway. Normally, the police could find violations substantial enough to deter that type of action, and he was of the opinion that the proposed section was an improvement over present law.

With Chairman Cole presiding in the absence of Sen. Browne, Sen. Carson moved the adoption of section 10. Motion carried unanimously subject to Sen. Browne's ratification upon her return with all five House members voting plus Sens. Carson and Eivers. Sen. Browne subsequently voted in favor of the motion.

Section 11. ORS 483.124. (Maximum speed on ocean shore.)

Following Mrs. Embick's explanation of section 11 as set forth in the commentary to that section, Rep. Marx questioned the necessity of including the opening clause in subsection (1), "Subject to the provisions of law relating to emergency vehicles and ambulances and subject to the basic speed rule," on the ground that it was not applicable to emergency vehicles and ambulances. Sen. Carson conceded that the phrase was not included in every section of the proposed Article and agreed with Rep. Marx that it should either be deleted in every section or included in every section where applicable.

Mr. Paillette remarked that the subcommittee contemplated dealing with this problem in Article I under "Applicability of provisions." The phrase, he said, was included as a convenience to the reader to alert him to the exceptions. He agreed that the code should be consistent throughout and the phrase should either be excluded in each instance or included in all places where it was applicable.

Capt. Williams remarked that the present law exempted emergency vehicles from two of the present statutes, i.e., speeding and stop signs, and those two exceptions should be carried over to the revised code. Rep. Marx was of the opinion that the code should spell out the statutes from which emergency vehicles were exempt. Mrs. Embick suggested that situation be taken care of in the sections relating to emergency vehicles and ambulances.

Mr. Paillette was of the opinion that the phrase should be retained in subsection (1) of section 11. Section 9, he said, contained specific exemptions for emergency vehicles while section 10 related to ambulances and the two were treated slightly differently. He believed it was good drafting practice to retain reference to those two provisions in section 11.

Mr. Moore, Deputy Legislative Counsel, said he would oppose inclusion of the phrase under discussion. If, however, the committee wanted to retain the phrase, he recommended that it read, "Except as provided in sections \_\_\_\_ and \_\_\_\_." That would alert the reader to check on specific exceptions. It was his opinion that statements such as that in section 11 (1), not containing a specific referral, added nothing to a statute.

Mr. Sipprell commented that section 1 of the Speed Restrictions draft related to speed of vehicles upon a highway, and the ocean shore was no longer included in the definition of "highway." Sen. Carson, in view of Mr. Sipprell's remark, questioned whether the basic rule could be made to apply to the ocean shore. If this were the only reference in the code applying the basic speed to the beaches, some redrafting was in order, he said. Mrs. Embick explained that the General Provisions in Article I would state that the Rules of the Road would be applicable throughout the state and on the ocean shore. Some of the ocean shore, she said, would fall under the definition of a "state highway" because of its use by the public for vehicles.

Rep. Cole asked what other part of the code would provide exceptions for emergency vehicles and ambulances should the opening phrase in section 9 (1) be deleted. He was told by Mrs. Embick that the Rules of the Road would contain an Article defining emergency vehicles and stating their privileges when they were on their way to an emergency. In that Article ambulances were permitted to exceed the speed limit by 10 miles over the maximum speed designation. Rep. Paulus asked if "emergency vehicle" would ultimately be defined and received an affirmative reply from Mrs. Embick.

Rep. Marx moved to delete the opening phrase from subsection (1) of section 9 to make the subsection read:

"(1) A person commits the offense of violating the maximum speed . . . ."

This motion was subsequently withdrawn. (See page 15 of these minutes.)

Rep. Cole asked if the basic speed rule would apply on the ocean shore when the speed was posted at less than 25 mph should the reference to the basic speed rule be deleted in accordance with Rep. Marx' motion. Mr. Paillette's opinion was that the basic rule would still apply.

Sen. Eivers suggested adding "or on the ocean shore" after "upon a highway" in section 1 which set out the basic speed rule. Chairman Browne suggested as an alternative including the ocean shore in the definition of "highway."

Mr. Paillette noted that ORS 483.036 read:

"The laws of this state relative to the rules of the road and the regulation of motor vehicles using the public highways of the state shall apply to all portions of the shore of the ocean which have been or may hereafter be declared to be a state recreation area."

Basically, he said, this same language appeared in section 1 of the Article on General Provisions.

Sen. Carson pointed out that the basic rule only applied downward to less than the maximum speed. In addition the draft also provided for an affirmative defense couched in the same terms as the basic rule. In other words, the basic rule could only apply downward from the maximum speed and even though the roadway was posted for 55, a driver could be arrested for driving at 50 mph when the road was a sheet of ice.

Mr. Paillette suggested inserting in section 11 a transitional reference to section 1 of the General Provisions Article and also to section 1 of this Speed Restrictions Article, the purpose being that the final draft would contain a specific reference to a section that would ultimately incorporate an ORS section.

After further discussion, Rep. Bunn moved to amend Rep. Marx' motion by reinstating "subject to the basic speed rule" in section 11 (1). Under the terms of his motion subsection (1) would read:

"Subject to the basic speed rule, a person  
commits the offense of violating the maximum speed  
limit . . . . "

This motion was subsequently withdrawn. (See next page.)

Rep. Marx asked if Rep. Bunn's amendment was an attempt to make the basic speed rule apply under the maximum designated speed and received an affirmative reply from the Chairman. Chairman Browne asked if the adoption of Rep. Bunn's amendment would make it clear that the basic rule would then apply to ocean shores. Mrs. Embick's opinion was that it would. She added that the first section of the General Provisions did not state whether any of the Rules of the Road applied on private property or beaches as opposed to highways. For clarity, therefore, section 11 would need to contain the statement that the basic rule was applicable thereto.

Sen. Carson proposed to move the provision relating to maximum speed on ocean shores to section 2. Sen. Eivers expressed approval of this proposal and reiterated his earlier suggestion to add ocean shores to section 1. Rep. Bunn asked if there would be an affirmative defense if a driver went at a faster speed than 25 mph on the ocean shore should Sen. Carson's proposal be adopted. Sen. Carson replied that the affirmative defense would be available to a violator under his suggestion. Rep. Bunn indicated he would then oppose the suggestion because he did not want an affirmative defense available to anyone who drove faster than 25 mph on the beach.

Capt. Williams agreed with Rep. Bunn that in order to effectively control the speed on the beaches, an affirmative defense should not be available to a violator. He suggested that one way of applying the basic rule to the ocean shores would be to adopt a statement such as that contained in section 9, subsection (6):

"Notwithstanding any other provision of this section, the motor vehicles referred to in this section are subject to the provisions of section 1 of this Article."

After further discussion, both Rep. Marx and Rep. Bunn withdrew their motions because neither believed their proposals would accomplish the result they were attempting to reach.

Sen. Eivers, in view of the affirmative defense in section 3, requested unanimous consent to withdraw his approval of that section. He indicated he was opposed not only to an affirmative defense to speeding on the ocean shore but also to that concept in any other situation.

#### Amendment to Committee Rules Governing Senate Members

The committee recessed briefly at this point and upon reconvening Chairman Browne observed that the rules under which the committee operated, as set out in HJR 11 of the 1973 Regular Session, required that the House and Senate members vote as separate entities. Inasmuch as there were four Senate members assigned to the committee, she proposed to pass a rule whereby a quorum would consist of three Senators and a majority of two Senators could approve a motion. With all four Senate members present, a majority would require three votes.

Rep. Cole remarked that the adoption of such a rule might be in conflict with HJR 11 requiring a majority vote of House members and a majority vote of Senate members. Rep. Hampton commented that a rule to that effect might be appropriate for all interim action but suggested that the stated rule in HJR 11 be preserved when the committee voted on final approval of measures for submission to the legislature.

Sen. Carson moved to adopt the rule proposed by the Chairman. Specifically, three Senate members shall constitute a quorum present of the Senate membership and a majority vote of two of the three Senate members shall be sufficient to take action on any measure. Chairman Browne specified that the intent of the motion was that it would apply to the final vote as well as to interim action. She added that an opinion would be requested from Legislative Counsel as to whether this rule could apply to the committee's final product as well as to interim decisions. Motion carried unanimously. Voting: Sens. Carson, Eivers, Chairman Browne.

SPEED RESTRICTIONS; Preliminary Draft No. 3; April 1974

Sen. Eivers then requested permission to rescind his affirmative vote on sections 1 through 8. There being no objection, it was so ordered. The Chairman directed that under the rule just adopted, the action taken by the committee in approving sections 1 through 8 was still valid.

Sections 1, 3 and 11.

Rep. Hampton moved adoption of the following amendments to sections 1, 3 and 11 of the Speed Restrictions Article:

Section 1, subsection (1): After "upon a highway" insert "or upon the ocean shore".

Section 3: After "It is an affirmative defense to the offense of speeding" insert "as defined in section 2 of this Article".

Section 11, subsection (1): Delete "Subject to the provisions of law relating to emergency vehicles and ambulances and subject to the basic speed rule,".

Section 11, subsection (2): Delete "Commissioner" in the first line and insert "Commission".

Mr. Paillette suggested that the commentary also be expanded in section 1 to make note of the fact that the ocean shore was included in the basic speed rule. He also noted that the committee would again be considering this problem in connection with the Article on General Provisions and might at that time decide this amendment to section 1 was unnecessary.

Rep. Hampton explained that the intent of his motion was that the basic speed rule would apply on the ocean shores up to the maximum and the affirmative defense would not be available. In other words, if



someone were cited on the ocean shore for going 15 mph, the state would have the affirmative burden of proving that he was going at a speed greater than was reasonable and prudent.

Vote was then taken on the motion to amend section 1 by inserting "upon the ocean shore" after "upon a highway". Motion carried unanimously. Voting: Sens. Carson, Eivers, Chairman Browne. Reps. Bunn, Hampton, Marx, Paulus, Chairman Cole.

Chairman Cole moved that section 1 be repassed as amended. Motion carried unanimously with the same eight members voting.

Vote was next taken on the motion to amend section 3 by inserting "as defined in section 2 of this Article" after "the offense of speeding". Motion carried unanimously with the same eight members voting.

Chairman Cole moved the repassage of section 3 as amended. Motion carried unanimously with the same eight members voting.

Vote was taken on Rep. Hampton's motion to amend section 11, subsection (1), by deleting the first phrase. The section as amended would then read:

"A person commits the offense of violating  
the maximum speed limit . . . . "

Included in the same vote was the amendment to subsection (2) whereby "Transportation Commission" was substituted for "Transportation Commissioner". Motion carried unanimously with the same eight members voting.

Rep. Marx moved the adoption of section 11 as amended. Motion carried without opposition with the same eight members voting.

Sections 7 and 8 of Article on Obedience to and Effect of Traffic Laws. Rep. Cole expressed concern over the provision in sections 7 and 8 of the Article on Obedience to and Effect of Traffic Laws which restricted the speed of ambulances to 10 miles over the maximum speed limit. He urged that ambulances be permitted to go faster than that on the ocean shore because it might save a life when someone who was pulled from the ocean needed a pulmotor or other emergency equipment. In some instances, he said, there were considerable distances to be covered on the beaches.

Chairman Browne directed that this problem be flagged so it could be taken care of at the time the committee worked on that Article.

ORS 483.118. (Speed on public bridge, causeway or viaduct.) Mrs. Embick noted that ORS 483.118 authorized the Transportation Commission to set maximum speeds for bridges, causeways and viaducts. The subcommittee decided, she said, that inasmuch as provision already existed for the Transportation Commission and State Speed Control Board to set appropriate speeds, this section was redundant and should therefore be deleted.

There being no objection, the committee approved the subcommittee's deletion of ORS 483.118.

ORS 483.110. (Payment of expenses of board and of expenses in establishing special speed limits.) Mr. Paillette explained that ORS 483.110 was set out on page 25 of the Speed Restrictions draft for the reason that, although the section was not substantively affected by this draft, it and other sections in this category would be amended editorially to conform to the rest of the code.

TRAFFIC SIGNS, SIGNALS AND MARKINGS; Preliminary Draft No. 2; March 1974

Section 1. (Obedience to and required traffic control devices.) Mrs. Embick explained that "official traffic control device" was a phrase recommended by the Uniform Vehicle Code and covered all the specific terms used in existing law. She pointed out that the UVC definition was set out on page 3 of the draft and would be included in the General Definitions applicable to all Rules of the Road.

Rep. Hampton said he had seen ingenious defense counsel contend that it was possible for anyone to buy a stop sign and thereby raise a question as to whether a particular sign was an official sign placed in that location by public authority. He asked how a sign actually became an official traffic control device and if under the draft the state would be required to prove that a particular sign was indeed an official traffic control device or, conversely, if it was the responsibility of the defendant to prove that it was not. His concern was that time-consuming arguments before the court should be avoided wherever possible and if a sign appeared to be an official traffic control device and was in a location where one might be expected, presumptively it should be one.

Mr. Paillette explained that there were two presumptions in subsections (3) and (4) of section 1, and those presumptions coupled with the UVC definition of "official traffic control device" appeared to take care of the concern voiced by Rep. Hampton.

Rep. Paulus posed a hypothetical situation where the Highway Division decided that signs should be placed in locations A, C and D and the foreman who actually placed the signs placed them in locations A, B, C and D. She asked what the result would be if a person were then cited for violating the direction on the sign in location B.

Sen. Carson called attention to the text of the Motor Vehicle Laws of Alaska, s 02.005 (c), as set out on page 18 of the draft. He indicated a preference for the language of that section over that of the UVC, one reason being that it would take care of the question raised by Rep. Paulus. When a sign was mistakenly placed at location B, the presumption would be that because the sign was there, it was placed by lawful authority. However, if the defense lawyer found that there was no authority for a sign at that location, it would not have been placed in conformance with the statute and therefore the defendant would not be guilty of the charge.

Mrs. Embick commented that the presumption stated in subsection (3) of the draft was rebuttable by contrary evidence. The major difference in that and the Alaska provision was that the Alaska code actually contained a statement to that effect whereas subsection (3) did not. Sen. Carson agreed that there was little difference in the meaning of the two provisions, but the Alaska language contained a directness he found lacking in the UVC language.

Sen. Carson then moved to substitute subsection (c) of 13 AAC 02.005 for subsection (3) of section 1 of the draft with appropriate editorial changes. Motion carried unanimously. Voting: Sens. Carson, Eivers, Chairman Browne. Reps. Bunn, Hampton, Marx, Paulus.

Rep. Hampton suggested that the commentary contain a statement to the effect that section 1 was not intended to impose upon a prosecutor or any other party the responsibility to furnish proof that an official traffic control device was exactly what it purported to be.

Sen. Carson explained further that the problem was that when "official" was used, the statute should then say there was a presumption that when there was a sign that looked like, for example, a stop sign and when it was in a place where a stop sign might normally be found, the citizen should presume that it was indeed an official sign and the state should not have to bring in the engineer, the sign painter, etc. to prove that it was.

After further discussion, Sen. Carson moved to substitute subsection (d) of Alaska s 13 AAC 02.005 set forth on page 18 of the draft for subsection (4) of section 1 of the draft with editorial amendments. As adopted, the subsection would read:

"(4) A traffic control device placed pursuant to the provisions of this chapter or other laws or regulations of Oregon and purporting to conform to the lawful requirements pertaining to that device is presumed to comply with the requirements of this chapter, unless the contrary is established by competent evidence."

With Chairman Cole presiding in the temporary absence of Sen. Browne, the motion was unanimously adopted.

Mr. Paillette commented that with the adoption of this amendment, any traffic control device would be presumed to be official. Sen. Carson observed that in a later section of the draft the committee could make provision for persons who erected phony signs or placed their own signs so that everyone who posted a sign would not presumptively have placed an official traffic control device.

Chairman Cole requested an explanation of the last sentence of subsection (2) of section 1. Mrs. Embick replied that the first part of subsection (2) said that if, for example, no stop sign was posted at a particular intersection but a person failed to stop when he should have done so, he would still violate a Rule of the Road. Another example would be the statutory requirement that a driver yield right of way when entering a freeway. Although not every freeway entrance was posted with a yield sign, that fact did not cancel a driver's obligation to yield. In other words, subsection (2) of section 1 said that a statutory provision not requiring a sign is enforceable even though there is no sign in place.

Mr. Paillette suggested that the language of section 11-201 of the UVC might be more understandable. Sen. Carson was of the opinion that the last sentence of subsection (b) of Alaska code s 13 AAC 02.005 was superior to the UVC language.

The relative merits of the two provisions were discussed after which Rep. Hampton moved to substitute the last sentence of UVC s 11-201 (b) for the last sentence of subsection (2) of the draft. As adopted, the sentence would read:

"Whenever a particular section does not state that official traffic control devices are required, the section shall be effective even though no devices are erected or in place."

There being no objection, the motion carried. Voting: Sens. Carson, Eivers, Chairman Browne. Reps. Bunn, Hampton, Marx, Paulus, Chairman Cole.

With Chairman Cole presiding, vote was taken on Sen. Browne's motion to approve section 1 as amended. Motion carried unanimously with the same eight members voting.

Section 2. Traffic control signals. Following Mrs. Embick's explanation of section 2 as set out in the commentary, Rep. Paulus asked if the term "circular green light" was used to distinguish it from a green arrow light and received an affirmative reply from Mrs. Embick. In reply to a further question by Rep. Paulus, Mr. George indicated that square lights were in use in a few places in the state.

Rep. Paulus moved to delete "circular" before "green light" in subsection (1) of section 2. There being no objection, the motion was unanimously adopted.

Rep. Hampton proposed to include a provision stating a driver's duty to proceed when the signal light turned green. The committee did not adopt his suggestion.

Rep. Cole noted that the opening paragraph of section 2 made reference to pedestrian signals "carrying a word legend." He asked if there were any pedestrian signals in the state using a symbol for pedestrians such as a picture of a hand or of a person in place of a word legend. Mr. George advised that Oregon was working toward the use of the International Traffic Signals but as far as he knew that system did not use symbols for pedestrians. He added that symbols had become common when used in conjunction with signs but were not used on traffic signals in this state or anywhere else that he knew of.

Sen. Eivers moved to delete "carrying a word legend" in the opening paragraph of section 2. This motion was subsequently withdrawn. (See below.)

Rep. Bunn questioned the need for including "special" before "pedestrian signals" in that same sentence. Rep. Marx said that at first reading both he and Rep. Hampton thought the term referred to a signal telling a motorist that a crossing was used by pedestrians rather than to a "Walk" or "Wait" signal. Mrs. Embick advised that the wording was taken from the Uniform Vehicle Code, s 11-202. Sen. Carson added that in many parts of the state pedestrians were bound by red, green and yellow lights as opposed to a special pedestrian signal using word legends which was probably the reason the term was used. As far as he could see, it caused no inconsistency to retain the phrase.

Rep. Hampton stated that perhaps this was a legislative direction not to use any colors for a traffic signal other than red, green or yellow unless a special pedestrian signal was in use, in which case the special pedestrian signal could not be a color alone but had to carry a word legend. Mr. Paillette expressed the view that this was precisely the intent of the paragraph.

After further discussion, Sen. Eivers withdrew his motion to delete the phrase, "carrying a word legend."

Rep. Cole asked why pedestrians were combined with motor vehicles in section 2. The result of this amalgamation was that subsection (6) would impose the same penalty for someone crossing against a "Don't walk" signal as for a driver who ran a red light. Mrs. Embick explained that the thrust of this Article was essentially directed at what should be done by either a pedestrian or a driver when confronted

by a traffic control device. She agreed that subsection (6) would encompass both pedestrians and drivers who failed to obey a signal, but the committee would take up the matter of penalties when they arrived at the point of classifying the offenses. Mr. Paillette noted also that ORS 483.130 presently covered both pedestrians and drivers and the 990 section applied to both so that the approach in section 2 was not a radical departure from present law. He indicated that if the committee wanted to provide for two different penalties, another subsection could be added to make one provision applicable to drivers and the other to pedestrians.

To insure that this point would not be overlooked when the committee classified the offenses, Rep. Cole moved to delete subsection (6) and substitute:

"(6) A driver failing to obey a traffic control signal commits a \_\_\_\_\_.

"(7) A pedestrian failing to obey a traffic control signal commits a \_\_\_\_\_."

There was no objection and the motion carried unanimously.

Rep. Cole questioned the necessity of referring to a "marked or unmarked crosswalk" in subsections (1) and (2) inasmuch as the definition of "crosswalk" would encompass both. Mrs. Embick replied that this was UVC language and was probably included in an attempt to educate the general public.

Sen. Eivers moved the adoption of section 2 as amended. Motion carried unanimously. Voting: Sens. Carson, Eivers, Chairman Browne. Reps. Bunn, Hampton, Marx, Paulus, Chairman Cole.

Section 3. (Vehicle turns at intersections with red traffic control light.) Mrs. Embick indicated that section 3 was the provision authorizing a turn after stopping for a red light. It contained no change from existing law except to state a motorist's duty to yield to pedestrians.

Rep. Bunn moved adoption of section 3. Motion carried unanimously with the same eight members voting as voted on the previous motion.

Section 4. (Pedestrian control signals.) After Mrs. Embick's explanation of section 4 as set forth in the commentary to that section, Rep. Paulus pointed out that there was some overlap in the penalty subsections of sections 2 and 4 and suggested that the two be combined. Sen. Carson asked if there were any intersections in Oregon still using the red, green and yellow lights for pedestrians as opposed to the "Wait" and "Walk" signals. Mr. George replied that there were a few of the old type still in use. For that reason the committee

decided to leave the penalty subsections in sections 2 and 4 as drafted.

Rep. Cole moved the adoption of section 4. Motion carried unanimously with the same eight members voting.

Section 5. (Flashing signals.) When Mrs. Embick had concluded her explanation of section 5, Rep. Cole asked why section 5 used the terms "traffic signal," "traffic sign" and "stop sign" instead of "traffic control device" as used in the rest of the code. Mrs. Embick answered that the commentary to the UVC said that the flashing red light was the traffic signal itself but there were currently signs with word legends used in conjunction with a flashing red or yellow light. The language of section 5 described that combination.

Sen. Carson moved the adoption of section 5. Motion carried unanimously. Voting: Sens. Carson, Eivers, Chairman Browne. Reps. Bunn, Hampton, Paulus, Chairman Cole.

Section 6. (Lane direction control signals.) Following Mrs. Embick's explanation of section 6, Rep. Hampton questioned the purpose of sections 5 and 6 in view of the provisions of section 1 covering failure to obey any official traffic control device. Mr. Paillette explained that from the standpoint of educating the motorist, the sections were of value in telling him specifically what to do under a particular set of circumstances.

Sen. Eivers moved the adoption of section 6. Motion carried unanimously with the same seven members voting as voted on the previous motion.

Section 7. (Unlawful display of signs, signals or markings.) Mrs. Embick noted that subsection (1) of the draft referred to a person who "places, maintains or displays upon or in view of any street . . . a sign, signal," etc. whereas UVC s 11-205 said, "No person shall place, maintain or display upon or in view of any highway any unauthorized sign . . . ." The omission of "unauthorized" in the draft, she said, raised a question as to whether the section would in effect set up a defense to unlawful highway sign placement when a person placed what purported to be an official traffic control device. Someone might even be authorized to place the sign and still violate this section. Whether to include "lawfully" or "without authorization" or some similar language was the subject of considerable discussion in subcommittee, she said, and it was her opinion that subsection (1) should contain some limiting term of that kind. Without it an employee of the Highway Division might conceivably be cited for placing a sign.

Sen. Carson remarked that one of the reasons the subcommittee had decided against inserting "unauthorized," as did the Alaska code, was

that they didn't know who would authorize the placement. Rep. Bunn said he would support the inclusion of limiting language providing the commentary noted that the section was directed at fixed or permanent signs as opposed to temporary signs.

Mr. George called attention to ORS 483.040 and 483.044 on pages 5 and 6 of the draft Article on General Provisions which established the authority of the Transportation Commission and local authorities to erect signs.

Sen. Carson suggested inserting a reference to those sections in subsection (1) of section 7 by adding a phrase such as "not authorized in accordance with sections \_\_\_\_ and \_\_\_\_ of the General Provisions." Mrs. Embick noted that there were several places in the Oregon code which could be used as references, examples being ORS 366.455 and 377.700, both of which were referred to in the commentary on page 16 of this draft.

Following further discussion, Sen. Carson moved that the staff redraft subsection (1) of section 7 to identify the specific authority with the prerogative to place signs, probably by reference to the sections cited by Mr. George. The balance of the section could then be drafted to follow more closely the provision in UVC s 11-205 (a) which said, "No person shall place, maintain or display upon or in view of any highway any unauthorized sign . . . ." In addition, the commentary would be expanded to make it very clear that the section was not intended to refer to billboards, campaign signs, hand-held stop signs, etc. There being no objection, Sen. Carson's motion was adopted.

Rep. Marx moved adoption of section 7 as amended. Motion carried without opposition. Voting: Sens. Carson, Eivers, Chairman Browne. Reps. Bunn, Hampton, Marx, Paulus, Chairman Cole.

Section 8. (Unlawful interference with official traffic control device or railroad sign or signal.) Mrs. Embick advised that the major difference between section 8 and existing law, ORS 483.140, was the addition of culpability in the form of "criminal negligence."

Rep. Hampton asked why "without lawful authority and with criminal negligence" was stated conjunctively rather than disjunctively. Mr. Paillette explained that "criminal negligence" injected a minimum degree of culpability because that term indicated the lowest degree of culpability with respect to a prohibited act. It also prohibited any greater degree of culpability all the way up to intentional or knowing conduct by operation of the criminal statutes.

Capt. Williams contended, as he had before the subcommittee, that the addition of criminal negligence was going to be comparable to



waving a red flag before some of the magistrates and would make this statute extremely difficult to prosecute.

Sen. Carson asked if it would be criminal negligence if someone intentionally defaced a sign by removing the paint. Mr. Paillette explained that an act of that type would not be criminal negligence but by operation of the Criminal Code and because it said that when the culpability is criminal negligence, it would include acts done knowingly, recklessly or intentionally. In other words, criminal negligence prohibits any act of greater culpability. In reply to a further question by Sen. Carson, Mr. Paillette said that from the standpoint of application and ease of understanding, all forms of culpability could be spelled out in the statute -- criminal negligence, recklessness, intentional conduct or knowing conduct.

Chairman Browne suggested that the definition of "criminal negligence" be lifted out of the Criminal Code and placed in the commentary to section 8. The committee appeared to be in agreement with the Chairman's proposal.

Rep. Paulus moved to approve section 8 as drafted.  
Motion carried. Voting for the motion: Sen. Carson,  
Chairman Browne. Reps. Bunn, Hampton, Marx, Paulus, Chairman  
Cole. Voting no: Sen. Eivers.

#### Procedure for April 10 Meeting

Chairman Browne indicated that she would be unable to be in attendance at the meeting on the following day. Inasmuch as Sen. Burns would not be present either, a quorum of Senate members would not be present. For that reason and to make it possible for the committee to function, she asked for unanimous consent to be recorded as casting an affirmative vote on all motions offered that day with the proviso that she could reconsider her vote at the next meeting after she had an opportunity to review any amendments adopted. There being no objection, it was so ordered.

The meeting adjourned at 5:15 p.m.

April 10, 1974

Senate Members Present: Senator Wallace P. Carson, Jr.  
Senator George Eivers

Excused: Senator Elizabeth W. Browne, Chairman

Absent: Senator John D. Burns

House Members Present: Representative George F. Cole, Chairman  
Representative Stan Bunn  
Representative Lewis B. Hampton  
Representative Robert P. Marx  
Representative Norma Paulus

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

Others Present: See page 1 of these minutes

The meeting was called to order at 10:00 a.m. by Representative George F. Cole, Presiding Chairman.

[Note: In accordance with the committee action of the previous day, as reported on the preceding page of these minutes, Senator Browne is recorded as voting "aye" on all motions and roll calls taken on April 10, 1974.]

DRIVING ON RIGHT SIDE OF ROADWAY; OVERTAKING AND PASSING; USE OF ROADWAY; Preliminary Draft No. 2; March 1974

Section 1. (Driving on right side of roadway.) Mrs. Embick first called attention to the UVC definition of "roadway" set out on page 2 of the draft and noted that there was a difference between it and the Oregon definition in that the UVC definition did not include the shoulder or berm of a roadway. For that reason "roadway," as used throughout the Rules of the Road, referred to that portion of the highway used for vehicular travel and not to the space on the side of the road set aside for emergency purposes.

Rep. Hampton summarized Mennis v. Highland Trucking, Inc., 261 Or 233, 492 P2d 464 (1972), and asked if section 1 continued the exception the Supreme Court had written into the law in that case. Mrs. Embick replied that the decision was cited on page 3 of the commentary and there was no intent to upset its findings.

Chairman Cole asked if "obstruction" as used in paragraph (c) of subsection (1) would encompass a pothole in the roadway. The committee was in agreement that "obstruction" was not intended to be limited to a narrow definition of the word and would encompass such things as a pothole that could cause a car to be thrown out of control.

Mr. Paillette noted that ORS 483.302 specifically referred to times when the right half of the road was out of repair and therefore impassable. He asked Mrs. Embick if her intent was that subsection (1) would cover that situation. Mrs. Embick replied affirmatively and added that the draft section was derived from the UVC which did not use the phrase, "out of repair."

Miss Howard suggested adding "or a road condition" after "obstruction" in paragraph (c) as a means of further clarification.

Mr. Paillette stated that the section was not aimed at a situation where someone swerved or moved momentarily to the left to avoid a chuckhole in the road; it was directed at driving on the left for a period of time. Mrs. Embick said she believed it encompassed both.

Mr. Paillette asked Capt. Howard if the State Police would cite a motorist for failing to drive on the right when he moved into the left lane to avoid a pothole and moved back into the right lane immediately. Capt. Howard answered that under a Supreme Court decision by which they had been bound for a number of years, the driver would not be cited if he did not create a hazard.

Rep. Marx moved to insert "or condition" after "obstruction" in paragraph (c), subsection (1), section 1. There being no objection, it was so ordered.

Rep. Hampton moved to adopt section 1 as amended. Motion carried unanimously. Voting: Sen. Eivers, Chairman Browne. Reps. Bunn, Hampton, Marx, Paulus, Chairman Cole.

Section 2. (Slow driver duty to drive on right.) Following Mrs. Embick's explanation of section 2, Rep. Hampton expressed concern over the possibility of civil liability in the situation where a driver passed other cars moving at the "normal speed of traffic." The driver in the left lane could be proceeding at the maximum designated speed but it might be less than the normal speed of traffic at the time. It was only when the driver in the left lane fell below the maximum speed that a problem existed and when that occurred, he should be driving in the right lane. He opposed this kind of muddying of civil litigation because it permitted insurance companies to deprive people of just compensation. He preferred a simple rule that would prohibit passing on the right when the driver driving on the left was not exceeding the maximum speed.

Rep. Bunn suggested substituting "normal, legal speed of traffic" in subsection (1) for "normal speed of traffic."

Sen. Eivers said there were times when two drivers proceeded side by side and wouldn't let anyone pass even though the normal flow of traffic was faster than their speed. Rep. Hampton contended that if the two were proceeding at the legal speed limit, no one should be passing them.

Mr. Paillette commented that it would still be necessary to take into account the application of the basic rule in those situations where there was a hazardous road condition such as an icy or snowy surface. If everyone were driving at less than the designated or maximum speed because of the application of the basic rule, there might still be a driver under those circumstances who was driving at a lower speed than the normal flow of traffic.

After further discussion, Rep. Marx moved to adopt section 2 without amendment. Motion carried. Voting for the motion: Sen. Eivers, Chairman Browne. Reps. Bunn, Marx, Chairman Cole. Voting no: Hampton.

Section 3. (Duty to drive on right on two-way four lane roadway.) Following Mrs. Embick's explanation of section 3, Rep. Hampton asked if a red plastic pole erected on a freeway or a barrel placed on a freeway by the Highway Division would be a traffic control device and was told by Mrs. Embick that both would fall within the UVC definition of that term.

Chairman Cole asked if paragraph (1) (c) which referred to making a left turn at an alley or private driveway appeared in existing law and received an affirmative reply from Mrs. Embick.

Mr. Paillette explained that the language of the present statute was "in preparation for a left turn." There was considerable discussion on this point in subcommittee, he said, and they had ultimately decided that "making a left turn at an intersection" was more restrictive than "preparing to make a turn" and had adopted the more restrictive phrase at the recommendation of Capt. Williams.

Rep. Bunn moved adoption of section 3. Motion carried unanimously. Voting: Sens. Carson, Eivers, Chairman Browne. Voting no: Reps. Bunn, Hampton, Marx, Chairman Cole.

Section 4. (Slower driver duty to yield.) Chairman Cole asked if the references in paragraphs (a) and (b) of subsection (1) of section 4 correctly referred to section 2 of "this" Article and was told by Mrs. Embick that the reference should be to the Article on Speed Restrictions.

Rep. Bunn asked if section 4 meant that when traffic was traveling at 60 to 65 miles per hour under the basic rule, assuming there was no designated 55 mph speed, and a camper was traveling at 55 mph in accordance with subsection (1) (b) of section 2 of the Speed Restrictions Article, there was no obligation for him to pull off the road. Sen. Carson replied that if the maximum speed were 55 and he was moving at 55, it was his understanding that the camper would not have to pull over. He said he would hate to see anyone arrested for driving too slowly when he was traveling at the maximum speed.

Rep. Bunn said the result would be that when the normal flow of traffic was going 63 mph and there was a camper going 55 with 25 cars behind him, the camper could continue along at 55 mph rather than pulling off the highway to let other cars pass. He said he was not certain that was the result he wanted to achieve because as a practical matter the camper was holding up a line of traffic that would be trying to pass him and he believed some accidents could be prevented by requiring him to pull over and let the line of traffic pass, even though they might be exceeding the maximum speed.

Sen. Carson's contention was that when the maximum speed was 55 and the camper was doing 55 mph, there should be no requirement for him to pull over.

Capt. Williams agreed with Rep. Bunn. Under the basic rule in the present law, he said that if a car came up from the rear which was not violating the basic rule, the front car was required to move over to let him pass. From a practical standpoint, however, the vehicle going 55 mph might hold up some traffic but he was not the one who caused problems. The problems were caused by the camper traveling at 25 to 40 mph and holding up long lines of traffic. If all campers traveled at 55, he said, it would be no great problem because those who wanted to go faster than that, would find the opportunity to pass.

In view of this conversation, Mr. Paillette expressed the hope that all members understood that section 2 of the Speed Restrictions Article definitely made a change in the basic speed rule in the present law. He explained that ORS 483.104 said that speeds in excess of the speeds set out in that statute were prima facie evidence of violation of the basic rule whereas section 2 of the Speed Restrictions draft used the language, "shall be maximum lawful speeds."

Rep. Marx said he was under the impression that the Speed Restrictions Article merely shifted the burden to the defendant to prove that he was traveling in a safe manner when he was going faster than 55 on a clear day on dry pavement with no traffic. Sen. Carson explained that under the present law a person was presumed to be guilty of a violation when he was cited for traveling at 65 mph on a highway posted at 55. He then asked Capt. Williams if a state policeman would be more inclined to cite a driver doing 65 under the conditions

described by Rep. Marx if the present law were in effect or the proposed system were in effect. His question also extended to whether the judge or jury would be more inclined to convict under the proposed system than under the present system.

Capt. Williams said he had discussed the proposed changes with his personnel and their response was nearly unanimous that they could see no difference in the two systems. He added that they were disappointed because they would prefer a straight maximum speed law.

Sen. Eivers remarked that under the draft sections the officer would be under a duty to give a driver a ticket who was going faster than 55. Sen. Carson replied that technically he was supposed to cite him today when he exceeded the posted speed because it was prima facie evidence of his guilt. Rep. Bunn and Sen. Eivers believed that the officer had more discretion as to whether to issue a citation under present law, but Sen. Carson did not share that view.

Rep. Hampton asked if it was true that there was a four to six mph "fudge factor" built into the maximum speed laws. Capt. Williams replied that a number of states put a tolerance or "fudge factor" in their training manuals. The only maximum speed the police in Oregon had to deal with, he said, was the speed limit on trucks and at one time the patrol technique manual contained a five mph "fudge factor." This was a reasonable approach and gave the driver the benefit of the doubt if his speedometer happened to be slightly off.

Returning to a discussion of section 4 of the draft on Driving on the Right Side of the Roadway, Rep. Bunn said his primary concern was that section 4 would permit the driver who was holding up traffic at 55 mph to continue to do so but in view of Capt. Williams' remarks that most of the problems were caused by drivers proceeding at lower speeds than the designated speeds, he was willing to approve the section as drafted.

Sen. Carson moved adoption of section 4 and the motion carried. Voting for the motion: Sen. Carson, Chairman Browne. Reps. Bunn, Hampton, Marx, Paulus, Chairman Cole. Voting no: Sen. Eivers.

Rep. Hampton asked if the Rules of the Road contained authority to post day and night speeds, fog speeds, etc. Mr. George replied that authority existed to post speeds for special conditions but not specifically for day and night speeds.

Chairman Cole asked if the proposed draft was adequate to take care of those places where pedestrians walked through intersections in all directions with all vehicular traffic halted and the vehicles moved when the pedestrians were off the street. Mr. George replied that the authority existed, but this system had proven to be unsatisfactory in cities that had tried it.

Section 5. (Duty of driver of 8,000 pound vehicle, vehicle with trailer or camper to drive on right.) Following Mrs. Embick's explanation of section 5, Sen. Carson said he had concluded that if trucks were traveling at 55 mph or the posted speed, they should not be permitted to go faster than that to pass other vehicles. With the impending statute, he could see no need for section 5, which was in effect a "no trespassing statute," to keep heavy vehicles out of the left lane of a three lane highway. Rep. Hampton expressed approval of Sen. Carson's position and added that it was essentially the same argument he had made in opposition to section 2 of this Article.

Rep. Hampton then said that one reason for the inclusion of section 5 might be the probability that trucks and heavy vehicles would fall below the maximum speed when climbing uphill. Sen. Carson stated he had no disagreement with the impending statute or the requirement that slower vehicles should be on the right-hand side of the road, but in the committee's zeal to open up the freeway, he questioned whether they had gone too far by prohibiting a truck or bus from being in the left-hand lane under any circumstance.

Capt. Williams said that the problem arose when two trucks were proceeding side by side down the highway. Section 5 would give the police a stronger tool to get them off to the right and expressed approval of the section. He added that at the present time this statute would only be applicable on the stretch of highway from Wilsonville to Portland because it was the only six lane roadway in the state. He added that if Greyhound and Trailway busses were permitted to travel faster than the designated speed, as had been proposed, the legislature would have to take another look at this problem. It would seem wrong to force busses to stay out of the left lane because they would have to stay behind the slower moving trucks.

Sen. Carson asked Capt. Williams if he would approve of an amendment that would delete the reference to the three lane roadway and leave the rest of the section as drafted. Capt. Williams replied that the section was directed at legislation of the 1973 session and the police had not yet had sufficient time to realize the full effect of it. Right now, however, it was his opinion that the two lane requirement that trucks pull to the right was good and he did not think law enforcement would be hurt if the three lane requirement were eliminated.

Mr. George advised that the Highway Division had been instructed by the Ways and Means Committee to make a "before and after" study on the effect of the new law on lane usage. The "before" part had been completed, he said, and the "after" part to see what effect the statute had on the traffic stream was now being conducted.

Rep. Paulus suggested that approval of section 5 be deferred at least until the Highway Division had completed its study. Sen. Carson

requested that Mrs. Embick draft a section that would eliminate the "no trespass" feature in the third lane. His intent, he said, would be to keep heavy vehicles on the right-hand side but not completely close off the left lane to busses.

The committee agreed to take up the proposed redraft of section 5 at the next full committee meeting with the hope that Mr. George would be able to report on the results of the Highway Division's study of lane usage by that time.

Rep. Paulus moved to approve section 5 with the proviso that a redraft of the section would be considered at the next meeting of the full committee. Motion carried unanimously. Voting: Sens. Carson, Eivers, Chairman Browne. Reps. Hampton, Marx, Paulus, Chairman Cole.

Section 6. ORS 483.306. (Passing vehicles proceeding in opposite direction.) After Mrs. Embick explained the amendments made to ORS 483.306 by section 6, Chairman Cole asked what effect this statute requiring each driver to give half the roadway to the oncoming driver would have on wide loads and whether the lead car carrying a sign reading "Wide Load" would constitute an official traffic control device. It was Mrs. Embick's opinion that the UVC definition of "official traffic control device" would not cover a "Wide Load" sign.

Chairman Cole asked Capt. Williams if the state police cited drivers at the present time who were taking up more than half of a narrow road with a wide load, assuming there was a lead car with a proper sign giving warning of that load. Capt. Williams replied that so far there had been no real problems in this area. Section 6, he said, was intended as a guide to tell drivers they were to stay to the right and give the other party his portion of the roadway and was merely a restatement of existing law. If there were a collision with a wide load caused by a lack of care on the part of the pilot car operator, it would be a civil matter, he said.

Miss Howard advised that she had received requests from operators of pilot cars seeking amendment to the statutes relating to pilot car operation to spell out more precisely what another motorist should do when a pilot car tried to warn or flag him.

Sen. Carson asked if there were laws directed toward moving mobile homes. They created considerable hazard, he said, and asked if there were any specific requirements for such things as top lights on the pilot vehicles, etc. Mr. Sipprell indicated that the Highway Division issued permits for moving wide loads but not all movements required pilot cars. There was a specific width over which permits were required and mobile homes over 14 feet wide required pilot cars both fore and aft. The lights on pilot cars were provided for by statute, he said.



Sen. Carson moved adoption of section 6 and the motion carried unanimously. Voting: Sens. Carson, Eivers, Chairman Browne. Reps. Hampton, Marx, Paulus, Chairman Cole.

Section 7. (Overtaking a vehicle on the left.) After Mrs. Embick explained section 7, Rep. Hampton expressed concern over the phrase in subsection (3), "without interfering with the operation of a vehicle approaching from the opposite direction or a vehicle overtaken." If the approaching vehicle were speeding, he asked if this section was intended to mean that the passing vehicle would be liable for a resulting collision. Mr. Paillette indicated that the section was designed to protect both the overtaking and overtaken vehicles.

Rep. Hampton suggested amending the phrase to read " . . . with the operation of a lawfully operated vehicle approaching from the opposite direction." His concern was that section 7 would make the passing driver liable for an oncoming driver who increased his speed after the passing driver started to pass. If the intent was to make the passing driver strictly liable irrespective of the conduct of the oncoming driver, it was correct as drafted, but his position was that the passing driver should not be ruled negligent in that circumstance.

Capt. Williams indicated that the state police had never arrested anyone for speeding up while an oncoming car was passing. From a criminal standpoint it would be almost impossible to prosecute under a statute saying that the burden was not on the passing driver who was using the oncoming driver's lane.

Miss Howard commented that the overtaken car had a responsibility not to increase his speed while being passed. She said she looked at the language in section 7 as an educational tool to tell a driver that when he is going to pass, he must have sufficient clearance to do so.

Mr. Paillette advised that if the committee wanted to deal with the conduct of the oncoming driver, it should be in a separate statute and not as an exception to this section which was directed toward a driver's duty to use care when passing another vehicle.

Capt. Williams said that where there was an accident in which a driver contributed to the accident by speeding up when another car was passing, the officers would try to locate that driver and have him in court during settlement of the case.

Rep. Hampton requested that the commentary state that section 7 was intended to mean that even when the oncoming driver has violated the law by increasing his speed, the overtaking driver still has the duty to make certain there is sufficient clearance for him to pass. With that explanation he moved adoption of section 7 as drafted. Motion carried unanimously. Voting: Sens. Carson, Eivers, Chairman Browne. Reps. Hampton, Marx, Paulus, Chairman Cole.

The committee recessed for lunch and reconvened at 1:30 p.m. with the same seven members present has had been in attendance at this morning's session. Sen. Browne continues to be recorded as voting "aye" on all motions in accordance with committee action of the previous day. (See page 25 of these minutes.)

Section 8. - (Overtaking on right.) Mrs. Embick explained that subsection (1) of section 8 was a major departure from ORS 483.310 in that it would permit a vehicle to pass on the right of a left-turning vehicle when that movement could be made in safety and even though there was only one lane marked for traffic. This rule was adopted by the subcommittee because of testimony to the effect that it was a good way to allow the safe, expeditious movement of more traffic and also because the UVC recommended its adoption.

Chairman Cole commented that subsection (1) (b) would permit a driver to pass to the right of a left-turning driver on a two-way two lane roadway providing there was enough room for him to pass and even though only one lane was marked in that direction. Capt. Williams confirmed this was correct and added that present law permitted the driver to go out on the shoulder to pass; in other words, space was all that was necessary. Mr. Paillette advised that the present law included the shoulder but the proposed draft did not and was therefore more restrictive than present law.

Rep. Hampton said he would have no objection to the draft if it said, as did existing law, that a car could pass on the right when there were two clearly marked lanes, but he objected to allowing drivers to pass within a single lane even though it was wide enough for two cars. Capt. Williams said he too was opposed to such a provision.

Mr. George advised that there was a safety aspect to be considered in adopting this provision. There were, he said, a number of locations on the rural state highway system where the Highway Division had widened the pavement at intersections to permit a relief valve for cars to pass a left-turning driver. They were merely wide single lanes where the shoulder had been paved and they were not striped for another lane, but they had effectively reduced the number of rear end collisions at these sites.

Rep. Hampton said the situation he was referring to differed from the one described by Mr. George. He noted that paragraphs (a) and (b) of subsection (1) were disjunctive and for that reason paragraph (b), when read alone, would allow a driver to pass on the right regardless of whether or not the other car proceeding in the same direction was making a left turn.

Rep. Marx moved to amend paragraph (b), subsection (1), of section 8 to read:

"(b) Upon a roadway with unobstructed pavement with two or more marked lanes for vehicles moving lawfully in the direction being traveled by the overtaking vehicle."

There being no objection, the amendment was adopted unanimously. However, the committee subsequently adopted further amendments to section 8 which deleted this revision. (See next page.)

Chairman Cole next pointed out that inasmuch as "roadway" as used in the draft did not include the shoulder, the committee might be repealing Mr. George's solution to rear end collisions with left-turning drivers by banning the use of the shoulder to overtaking vehicles. Also, Rep. Bunn wanted to know how it would be possible to enforce a provision that said a driver could pass on a paved shoulder but not on a graveled shoulder. Capt. Williams replied that enforcement would be tempered with good judgment and if the traffic were safely by-passing a left turning vehicle, no action would be taken. Furthermore, there was unanimity in the committee that if the shoulder were paved, it would then become a part of the roadway which would answer the questions raised by both Chairman Cole and Rep. Bunn.

Mr. Paillette called attention to the commentary to the UVC as set out in Traffic Laws Annotated and advised that the committee may have misread UVC s 11-304. He first noted that in the UVC section, paragraphs (a) and (b) as set out in the draft were separated only by a semi-colon and were not stated disjunctively as in the draft. Under "Historical Note" the commentary said:

"The 1971 revision combined subsections (a)1 and (a)2 into one rule: a driver may pass whenever the roadway is wide enough to accommodate at least two lines of vehicles moving in the same direction."

Under "Statutory Annotation" the commentary stated:

"The Code provides that a driver may pass on the right:

"(1) Of a vehicle making or about to make a left turn.

"(2) When there are at least two unobstructed lanes for vehicles moving in the same direction.

"(3) Only when such passing can be accomplished safely.

"(4) Only when such passing can be accomplished without driving off the roadway."

In view of the above, it was Mr. Paillette's opinion that the section was not meant to say that a driver could pass on the right just because someone was making a left turn which was, in effect, what the draft said. He suggested that paragraph (1) (a) be combined with the unamended version of paragraph (1) (b) to require a left turn plus sufficient width for two cars before a driver could pass on the right. Paragraph (b), subsection (c), of ORS 483.310 could then be added as a separate paragraph inasmuch as it dealt with a different consideration, namely, vehicles being driven in the left lane of a roadway having two or more clearly marked lanes where no left turn is involved.

After further discussion, the committee adopted by unanimous consent the amendments to subsection (1) of section 8 as described by Mr. Paillette:

(1) Delete the amendments adopted by the committee earlier to paragraph (b), subsection (1).

(2) Combine paragraphs (a) and (b) of subsection (1).

(3) Add the provision contained in ORS 483.310 (3) (b).

Rep. Hampton moved adoption of section 8 as amended. Motion carried. Voting for the motion: Sens. Carson, Eivers, Chairman Browne. Reps. Hampton, Marx, Paulus, Chairman Cole. Voting no: Rep. Hampton.

Section 9. (Further limitations on driving on left of center of roadway.) Rep. Paulus asked whether subsection (1) of section 9 would apply to a four lane highway with two lanes of traffic going in each direction. Mrs. Embick replied that subsection (1) would apply to the type of highway described by Rep. Paulus and would mean that a driver could not cross the center line of a four lane highway except in the situations described in subsection (2).

Rep. Paulus asked under what circumstances a car could drive to the left of the center line even when there was no hill and the view was unobstructed. Mrs. Embick answered that section 7 would allow a passing driver to drive to the left and the left turn section would permit a driver to drive to the left of the center line when making a left-hand turn.

Rep. Hampton said that where there was a divided freeway with two lanes in each direction, this section would not apply because that would be the same as a one-way roadway. Apparently, he said, section 9 dealt only with two-way roadways.

Rep. Paulus commented that the normal situation was that a driver could not drive on the left of the center line except when passing. It was her contention that the proposed statute would be more readily

understood if it simply stated the situations in which a driver could or could not drive on the left.

Rep. Marx pointed out that section 1 of this Article stated that a driver had a duty to drive on the right. Section 7 said a driver could not pass without sufficient clearance. Those two sections taken together, he said, would cover everything in section 9. Capt. Williams indicated that section 7 said that a driver, when passing, could not be to the left of the center line when approaching a curve or the crest of a grade. He explained that there were two reasons for section 9. One was educational and the other was that it followed the recommendations of the UVC. Capt. Williams was of the opinion, however, that existing law, ORS 483.308, was clearer than this draft section although they both accomplished the same purpose, namely, to state that drivers could not move to the left of the center line at certain places such as the crest of a grade or on a curve.

Rep. Paulus noted that the penalty classification for section 1 referred to "Failure to drive on the right" while the penalty classification for section 9 was "Failing to drive on the right." It was her opinion that the better drafting technique would be to include the provisions of section 9 in section 1.

Mrs. Embick explained that section 9 contained a major change from existing law in that ORS 483.308 (3) permitted passing at railroad grade crossings and intersections when the pass could be made safely. The draft section would delete that provision.

Sen. Carson commented that when the subcommittee considered this section, they had discussed the advisability of making it illegal to make a left turn at the crest of a hill and he was on the losing side. He again raised the point here that it was exceptionally dangerous to turn left at the crest of a hill, but other members contended that property owners should be permitted to turn into their private driveways even when those driveways were located on the crest.

Rep. Paulus, with respect to subsection (1) (c), said the only thing that provision would prevent was passing while crossing an intersection or railroad. She maintained this provision should appear as an exception to the section dealing with passing. She read section 9 to mean that it was sometimes all right to drive on the left side of the center line even though the driver was not passing or turning left.

Chairman Cole remarked that there was already a prohibition in the draft against driving on the left side of the center line on a four lane highway except when making a left turn. No one was permitted to cross the center line of a four lane highway to pass another vehicle.

Rep. Hampton was in agreement with Rep. Paulus's position when paragraph (c) of section 9 (1) was read by itself. However, when read in context with the preceding sections, it assumed a different meaning. Apparently, he said, the assumption was that the paragraphs in subsection (1) would be read one following the other, each one going beyond the preceding paragraph. In other words, one proscription was stacked upon another.

Rep. Paulus said that what this section was trying to prevent was a driver driving to the left of the center line except when passing or turning left. Apparently there were no other circumstances on an Oregon highway with traffic proceeding in two directions where a driver was permitted to drive in the left-hand lane. Therefore, if the intent of section 9 was to say that a left-hand turn could not be made at the crest of a hill or on a railroad track, it would be better drafting to place those exceptions in the section permitting left-hand turns.

Miss Howard commented that section 6 was the first section in this Article dealing specifically with passing. Section 7 dealt with overtaking a vehicle on the left and section 8 with overtaking on the right. She suggested that there might be less confusion with section 9 if it were labeled, "Further limitations on passing and driving to the left of center of roadway."

Mr. Paillette commented that the present law contained some of the duplications that were causing the confusion with this section. However, in ORS they were all in one section whereas the UVC approach was to shred the provisions out into separate areas and when exceptions to a limitation existed, to place them in separate sections. He said there was nothing wrong with putting all the exceptions into one section but the committee should be careful not to oversimplify.

Rep. Paulus suggested that subsection (1) be clarified by a statement to this effect:

"A driver commits the offense of failing to drive on the right if he passes or makes a left turn under the following circumstances:"

Sen. Carson said that would not cover situations where a person was driving on the left on an unmarked road, such as a gravel road with a rut down the middle, and was neither passing nor making a left turn. Rep. Paulus said that circumstance was already covered by an earlier section, and the general prohibition that a person could not drive on the left except under specific circumstances appeared to her to be obviated by section 9.

Following further discussion, Chairman Cole directed that the staff redraft section 9 for resubmission to the full committee at its next meeting.

Section 10. (No passing zone.) Rep. Hampton asked if a provision appeared anywhere in this draft which placed an affirmative duty of care on a person turning left into his private driveway, particularly when the driveway was at the crest of a hill. Sen. Carson replied that the draft required him to make the turn only when it could be done with safety, and this same requirement extended to when he was entering the roadway from his private driveway.

Chairman Cole noted that section 10 would make it a violation for a person to pass when the solid line was in his lane which was a departure from existing law. Mr. George said that if this section were enacted, the Highway Division would have to change the signs which presently said "unsafe to pass when solid line is in your lane" to read "illegal to pass."

Mr. Paillette advised that both the Motor Vehicles Division and the State Police felt this should be an illegal act rather than an unsafe act. Miss Howard urged passage of this section as an educational tool and to avoid the confusion inherent in existing law. At the present time, she said, the "unsafe" signs were meaningless.

Capt. Williams advised that the State Police supported section 10 and in addition had taken the position that turning to the left in any unsafe place should be made unlawful because of the number of accidents resulting from farmers turning left into their driveways. This, however, as pointed out by Sen. Carson earlier, had proven to be a minority view in this committee.

Rep. Bunn moved adoption of section 10. Motion carried unanimously. Voting: Sens. Carson, Eivers, Chairman Browne. Reps. Bunn, Hampton, Marx, Paulus, Chairman Cole.

Section 11. (One-way roadways and rotary traffic islands.) Mrs. Embick explained that present law contained no comparable provision to section 11, but it could be considered duplicative of section 1 of the Article on Traffic Signs, Signals and Markings stating that official traffic control devices were to be obeyed.

Rep. Marx moved the adoption of section 11. Motion carried unanimously with the same eight members voting as voted on the previous motion.

Section 12. (Driving on roadways laned for traffic.)

Following a brief explanation of section 12 by Mrs. Embick, Sen. Eivers moved the adoption of section 12. Motion carried unanimously with the same eight members voting.

Section 13. (Following too closely.) After Mrs. Embick explained section 13, Rep. Hampton asked Capt. Williams what basis officers used

for determining which drivers to cite for following too closely. Capt. Williams replied that the same criteria would be used under section 13 as under present law. It depended on the size of the vehicle overtaking and did create some problems because it was a judgment call on the part of the officer to decide what distance was too close.

Rep. Hampton asked how a driver was supposed to know the length of a vehicle behind him that wanted to pass. Mrs. Embick said she did not believe it was the intent of section 13 that a driver should watch the rearview mirror to see the size of the vehicle behind him. The proposed statute said "an overtaking vehicle," not "the overtaking vehicle," which she took to mean an average-sized vehicle and not a truck and trailer.

Rep. Hampton said he was concerned about the enforceability of the statute and the lack of specificity as to the standard the actor should pursue to make sure his conduct would absolve him of criminal liability. He was, however, willing to give it a try to see if any case law developed following enactment.

Chairman Cole moved the adoption of section 13. Motion carried unanimously with the same eight members voting as voted on the previous motion.

Section 14. (Driving on divided highways.) Chairman Cole asked if signs held by state, city or county employees directing traffic around a construction site would be considered "official traffic control devices." Mr. Paillette replied that such signs were not of a permanent or semi-permanent nature and would not therefore fall within that definition. However, another section, yet to be drafted, would be directed at authorization of certain individuals to direct traffic under specific circumstances, even though no such provision is included in the UVC.

Chairman Cole asked if subsection (2) of section 14 would permit a driver to drive into the dividing space or median strip in an emergency situation. Miss Howard commented that a provision of that kind would get into the problem of who was to define "emergency." Also, if drivers were permitted to pull into the median strip, when they pulled back onto the highway, they would be going back into the left lane which was the lane of fastest travel and could be very hazardous.

Capt. Williams remarked that under present law drivers were prohibited from driving on the median, but there was no enforcement taken against an individual who used it for a legitimate emergency. It was another instance requiring judgment on the part of the officer, but if written into the statute, it would be difficult to draw the line for a true emergency.



Sen. Carson moved adoption of section 14. Motion carried unanimously. Voting: Sens. Carson, Eivers, Chairman Browne. Reps. Bunn, Hampton, Marx, Paulus, Chairman Cole.

Following a brief recess, the committee reconvened with Sen. Carson excused for the balance of the afternoon.

RIGHT OF WAY; Preliminary Draft No. 2; March 1974

Section 1. (Vehicle approaching or entering intersection.) Mrs. Embick explained that section 1 of the Right of Way Article made a major change in Oregon's right of way law by providing that drivers approaching a freeway must give right of way to a vehicle on the right when they simultaneously approach a given point, regardless of which one reaches the intersection first. Oregon's right of way law, she said, was one of the chief areas at which the Committee on Uniform Traffic laws directed their criticisms, and the subcommittee was told that this situation was a major cause of highway accidents. Mrs. Embick also noted that section 1 would make a further change in existing law by removing the provision for forfeiting right of way because of unlawful speed.

Rep. Hampton objected to depriving a person of his right of way because of excessive speed on the part of another driver, particularly because of the impact it would have on civil cases. It would be much simpler, he said, to say that the defendant, although on the right, lost his right of way by excessive speed and thereby avoid the question of plaintiff's negligence. He could see no reason why the privilege of right of way should not be conditioned upon proceeding at a lawful speed.

Mr. Paillette advised that the approach the UVC had taken since 1930 was that it was important to have one clear, simple rule to apply in all situations.

Lt. Crabtree stated that after a number of years of scooping up remains following serious accidents, he opposed any provision that would take the onus off of speed because it was the factor that contributed most to the severity of accidents. He added that he would favor going even further by providing that excessive speed would forfeit the right of way in left turn situations and recommended addition of the speed factor to both subsections (4) and (5) of ORS 483.202. Sen. Eivers expressed agreement with Lt. Crabtree's statement.

Rep. Hampton suggested amending subsection (1) of section 1 by adding to the end of that subsection: "if the driver on the right is not exceeding the lawful speed."

Chairman Cole questioned the advisability of Rep. Hampton's proposal because it would increase the possibility of accident by stating that a driver didn't have to yield to anyone who was exceeding the speed limit. The better way, he said, would be to state Rep. Hampton's proposal in a separate subsection.

Rep. Hampton said there was a further problem as to how the right of way would transfer to the driver on the left. Mrs. Embick indicated that under present law the duty to yield did not transfer by the fact of excessive speed. She called attention to ORS 483.202 (3) which set out existing law in this regard.

Rep. Paulus commented that the holding in Medina v. Mayo, 98 Adv Sh 216 (1973), [see commentary on page 2 of the draft], should be written into the statute and was told by Rep. Hampton that if ORS 483.202 (3) were left undisturbed, the Medina holding would still be applicable.

Miss Howard suggested that an appropriate place for the proposed amendment might be to state it as an exception to the right of way rule in subsection (2) of section 1. Chairman Cole concurred.

Sen. Eivers asked who was cited under present law when there was a collision under the circumstances being discussed. Capt. Williams replied that the one who received a citation was the one who failed to yield to the car on the right except when there was obvious evidence of speed, in which case neither was cited. Lt. Crabtree confirmed that this was the way it was handled in Portland also, and neither driver was cited unless there was enough evidence to convict the driver on the left of speeding.

Rep. Bunn stated that education in Oregon had been successful in getting across to the public that the driver on the right had the right of way and there was no confusion on that point in the public's mind. The confusion usually arose only in litigation, and he believed existing law handled that situation. Both he and Sen. Eivers opposed changing present law in this regard.

After further discussion, Mr. Paillette commented that there was no point in rewriting existing law, except to make it conform to the style used in the rest of the draft, if the committee wanted to stay with those provisions notwithstanding the recommendations of the UVC. Sen. Eivers said he would prefer that course of action, one reason being that the present statutes had been interpreted by the Supreme Court, and he could see no point in changing just to conform to the Uniform Vehicle Code.

Rep. Marx moved to insert a new paragraph (d) under subsection (2) of section 1 to read substantially as follows with the understanding that the staff would make any further editorial amendments that were necessary:

"(d) Any driver entering an intersection at an unlawful speed shall forfeit any right of way he would otherwise have under this section."

There being no objection, the amendment was adopted.

Rep. Paulus moved to adopt section 1 as amended. Motion carried unanimously. Voting: Sen. Eivers, Chairman Browne. Reps. Bunn, Hampton, Marx, Paulus, Chairman Cole.

Section 2. (Driver turning left.) Following Mrs. Embick's explanation of section 2, Rep. Hampton stated that the proposed section was an improvement over existing law even though the driver of the left-turning vehicle might grow old waiting for the traffic to clear. Lt. Crabtree also expressed approval of the section and asked if it would be possible to add to it the provision that excessive speed of the oncoming car would forfeit his right of way. Rep. Hampton agreed that a provision of that kind should logically follow the preceding section, but it would be almost impossible to draft.

Rep. Hampton moved the adoption of section 2 as drafted. Motion carried unanimously with the same seven members voting as voted on the previous motion.

Rep. Hampton commented that the Supreme Court had interpreted existing law to mean that when the oncoming driver was traveling at a speed which would not cause him to brake or to slow down sharply should the left-turning driver pass in front of him, the turning driver did not constitute an immediate hazard.

Section 3. (Stop signs and yield signs.) Rep. Hampton asked if there was a provision directed at intersections with four-way stops. Miss Howard advised that the Driver's Manual made a statement to the effect that common courtesy should prevail, but four-way stops were not specifically covered by law and she was not sure they should be.

Capt. Williams remarked that four-way stops had caused no great problem and it might only complicate the matter if an attempt were made to legislate for that type of intersection.

Rep. Bunn moved adoption of section 3. Motion carried unanimously with the same seven members voting as voted on the previous motion.

Section 4. (Right of way at merging lanes of arterial highway.) After Mrs. Embick explained section 4, Rep. Cole asked if it would apply to freeway areas where two lanes merged into one and also inquired as to whether there was a problem in that area. Mr. Sipprell advised that there had been a problem before the enactment of subsection (1) of ORS 483.202 in 1969, but enactment of this provision had pretty well resolved it.

Rep. Marx moved the adoption of section 4. Motion carried unanimously with the same seven members voting as voted on the previous motion.

Section 5. (Vehicle entering roadway from private road, alley or place.) In response to a question by Rep. Paulus, Mrs. Embick advised that section 5 was intended to apply to dune buggies, snowmobiles, etc.

Sen. Eivers moved the adoption of section 5. Motion carried unanimously. Voting: Sen. Eivers, Chairman Browne. Reps. Bunn, Hampton, Paulus, Chairman Cole.

Section 6. (Operation of vehicles on approach of emergency vehicle or ambulance.) Chairman Cole asked if vehicles moving down a four or six lane freeway would be required by section 6 to pull over and stop upon the approach of an emergency vehicle. Mrs. Embick said the section as drafted imposed that requirement. She added that a previous draft contained a section requiring a driver to pull over to the nearest curb of the roadway and stop when the road was one-way and had more than one lane. Under that draft a driver would pull to the far left if he happened to be driving in the left lane when the emergency vehicle approached. However, testimony to the subcommittee was that drivers were trained to pull to the right when they heard a siren and a change in that law might only confuse them.

Chairman Cole then noted that subsection (1) referred to "the driver of every other vehicle" which would include cars going in a direction opposite to the emergency vehicle. He asked Capt. Williams if he believed it was necessary for all traffic to pull over and stop on a six lane highway with three lanes moving in one direction. Capt. Williams said that police officers encountered considerable difficulty in getting cars to even move over so they could pass, let alone getting them to stop. It was his opinion, therefore, that the statute should be worded as forcefully as possible. If the statute required drivers to pull over and stop, perhaps they would at least move out of the way. On the freeway, he said, the police would prefer traffic to move to the right, thereby clearing the fast lane on the left, and he could not see how a requirement to stop would create any problem.

Lt. Crabtree said emergency vehicles on a city street posed a problem different from that on the freeway. It was more logical for

the emergency vehicle to use the lane on the left when traveling on the freeway. However, on a city street with four lanes in one direction, the most logical move for a motorist who hears a siren is to move to the left or right to clear the center of the street. As a practical matter, he said, motorists usually stop where they are and the ambulance works its way through the traffic.

Miss Howard advised that for several years the Driver's Manual had included a statement that the law requires a driver to pull to the right-hand curb. However, in some areas with one-way streets it might be more practical to move to the left if the driver is in the left-hand lane at the time. She agreed that the problem was different in cities where there were wide one-way streets and it would constitute a distinct hazard to require all traffic to move to the right, thereby forcing the driver in the far left to cross four lanes of traffic. On the freeway, however, they should move to the right.

Chairman Cole said one way to handle the problem might be to allow cities to adopt ordinances to more suitably handle their local situations. The trouble with that approach was that every city might then have a different rule.

The committee held a lengthy discussion of various ways to resolve this problem but finally concluded, as had the subcommittee, that the section was drafted as well as it could be and that, taken as a whole, the best answer was to have all traffic flowing to the right when an emergency vehicle approached.

Rep. Bunn moved to adopt section 6 as drafted. Motion carried. Voting for the motion: Sen. Eivers, Chairman Browne. Reps. Bunn, Hampton, Marx, Paulus. Voting no: Chairman Cole.

#### Next Full Committee Meeting

The committee agreed to hold its next meeting on May 7 and 8, 1974.

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

Respectfully submitted,

Mildred E. Carpenter, Clerk  
Committee on Judiciary

PROPOSED OREGON VEHICLE CODE

PART I. RULES OF THE ROAD

Tentative Outline

ARTICLE I. GENERAL PROVISIONS

Definitions

Applicability of provisions

Required obedience to traffic laws

Powers of local authorities

Permitting unlawful operation of vehicle

Failing to obey police officer

Uniform or badge required

Public officers and employees

Persons working on highways; exceptions

Application to emergency vehicles

Application to ambulances

Authorized vehicles

Special rules for animals on highway

ARTICLE II. TRAFFIC SIGNS, SIGNALS AND MARKINGS

Obedience to and required traffic control devices

Traffic control signals

Vehicle turns at intersections with red traffic control light

Pedestrian control signals

Flashing signals

ARTICLE II. TRAFFIC SIGNS, SIGNALS AND MARKINGS (Cont'd)

Lane direction control signals

Unlawful display of signs, signals or markings

Unlawful interference with official traffic control device

ARTICLE III. DRIVING ON RIGHT SIDE OF ROADWAY - OVERTAKING  
AND PASSING - USE OF ROADWAY

Driving on right side of roadway

Slow driver to drive on right

Duty to drive on right on two-way four lane highway

Slower driver to yield

Duty of driver of 8,000 pound vehicle; vehicle with  
trailer or camper to drive on right

Passing vehicle proceeding in opposite direction

Overtaking a vehicle on the left

Overtaking a vehicle on the right

Further limitations on driving on left of center

No passing zone

One-way roadways and rotary traffic islands

Driving on roadways laned for traffic

Following too closely

Driving on divided highways

ARTICLE IV. RIGHT OF WAY

Vehicle approaching or entering intersection

Driver turning left

Stop signs and yield signs

Right of way at merging lanes of arterial highway

ARTICLE IV. RIGHT OF WAY (Cont'd)

Vehicle entering roadway from private road, alley or place

Operation of vehicles on approach of emergency vehicle or ambulance

ARTICLE V. PEDESTRIANS' RIGHTS AND DUTIES

Pedestrian obedience to traffic control devices and regulations

Pedestrian's right of way in crosswalks

Pedestrian leaving curb

Driver not to overtake stopped vehicle

Crossing at other than crosswalks

Drivers to exercise due care

Pedestrian's use of sidewalk, shoulder and roadway

Pedestrians soliciting rides or business

Driving through safety zone prohibited

Pedestrian's right of way on sidewalks

Pedestrians yield to emergency vehicles

Rights of blind pedestrian

Unlawful use of bridge by pedestrian

ARTICLE VI. TURNING AND MOVING; SIGNALS ON STOPPING AND TURNING

Required position and method of turning

Limitations on U-turns

Moving parked vehicle

Signals for starting, stopping, changing lanes

Turning movements and required signals



ARTICLE VI. TURNING AND MOVING; SIGNALS ON STOPPING AND  
TURNING (Cont'd)

Signals by hand and arm or signal lamps

Method of giving hand and arm signals

ARTICLE VII. SPECIAL STOPS REQUIRED

Obedience to signal indicating approach of train

Vehicles must stop at certain crossings

Certain vehicles required to stop at all crossings

Moving heavy equipment at crossings

Emerging from alley, driveway or building

Overtaking and passing school bus

Duty to stop when bus loading or unloading

ARTICLE VIII. SPEED RESTRICTIONS

Basic speed rule

Maximum speeds

Speeding; affirmative defense

Special speed limits set by Transportation Commission

State Speed Control Board membership

Powers and duties of Speed Control Board

Designation of speed in complaint; use of radar; arrest  
without warrant

Impeding traffic

Maximum speeds for trucks and busses

Speed races prohibited on public ways

Maximum speed on ocean shore

ARTICLE IX.     SERIOUS TRAFFIC OFFENSES

ARTICLE X.     STOPPING, STANDING AND PARKING

ARTICLE XI.     OTHER RULES RELATING TO VEHICLES

ARTICLE XII.    OPERATION OF BICYCLES

ARTICLE XIII.   SPECIAL RULES FOR MOTORCYCLES