

COMMITTEE ON JUDICIARY

First Meeting, September 12, 1973

Minutes

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

Delayed: Senator George Eivers

Excused: Senator John D. Burns

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

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

Also Present: Lt. Marvin L. Acheson, Traffic Division, State
Department of Police
Mr. Gil W. Bellamy, Administrator, Traffic
Safety Commission
Mr. Dean Blakely, Traffic Safety Representa-
tive, Traffic Safety Commission
Mr. Tom Fender, Salem attorney representing
the Automobile Safety and Equipment
Association
Ms. Vinita Howard, Public Information and
Publications, Motor Vehicles Division

Agenda: Organization of committee and adoption of
committee rules

Staff report

General discussion of Motor Vehicle Code
Revision Project
Administrative adjudication system
Statutory revision

Rep. George F. Cole, presiding Chairman, called the meeting to
order at 9:30 a.m. in Room 14, State Capitol.

Organization of Committee and Adoption of Committee Rules

Chairman Cole indicated that the Committee on Judiciary for the 1973-75 interim consisted of five House members and four Senate members. Under HJR 11, the resolution establishing the guidelines for interim committees, a majority vote of the members of each house was required for approval of official committee action.

A copy of the proposed rules submitted to the committee for approval is attached hereto as Appendix A. Chairman Cole's only criticism of the proposed rules was directed at Rule 3 requiring three out of four Senate members to be present. He pointed out that should two Senators be absent, the committee would be unable to transact business. To avoid this problem he suggested it might be more realistic to stipulate that a majority of the total membership would constitute a quorum, i.e., five members from either House. The rules would still comply with the provisions of HJR 11 because Rule 4 stated that official action would require the approval of a majority of the Senate members (three) and a majority of the House members (three). It was unanimously agreed that Rule 3 should be amended to read:

"3. A quorum shall consist of five committee members."

Senator Browne moved adoption of the proposed committee rules as amended. Inasmuch as only two Senate members were present at this point, vote was postponed. Upon the arrival of Senator Eivers a short time later, vote was taken and the motion carried unanimously with all members present except Senator Burns.

Rep. Paulus asked who had the power to substitute membership on the committee and was told by Chairman Cole that the Speaker and the President had that power under HJR 11.

Staff Report

Mr. Paillette explained that since the adjournment of the regular legislative session, the staff, working with the Senate Chairman and the House Chairman, had attempted to get the committee underway as rapidly as possible and to that end had developed a work plan that was submitted to the Legislative Administration Committee in August in compliance with subsection (2) of HJR 11. At that time a budget was also submitted to and approved by the Emergency Board which authorized funding for the committee on a temporary basis beginning July 25 and ending November 1 by which time it was anticipated that federal funds would be received through the Traffic Safety Commission to pay expenses for the balance of the project period.

Mr. Paillette reported that he had met with the Oregon Traffic Safety Commission on July 25 and at that meeting the Commission approved a tentative project plan. Since that time a request for

federal funds to operate the project had been prepared and forwarded through the Oregon Traffic Safety Commission to federal officials in Seattle. He and the chairmen had met with both state and federal officials with respect to the proposed budget and request for funds. Although the request had not yet been officially approved, verbal assurance had been given that approval would be forthcoming.

Mr. Paillette advised that the project period as submitted to the Traffic Safety Commission would run from November 1, 1973, through June 30, 1975, which would extend through the 1975 legislative session. It provided for a skeleton staff during the 1975 session to work on the legislative phase of the project.

The objectives of the committee as submitted to the Legislative Administration Committee, the Emergency Board and the Traffic Safety Commission were two-pronged. The first phase would be the preparation of an administrative adjudication system to process minor traffic offenses in Oregon. This would involve a decriminalization and a revision of the penalty structure for most of the minor traffic offenses. In conjunction with that phase, although the two were not necessarily interdependent, the second objective would be to prepare a revision of the motor vehicle code.

Mr. Paillette called attention to material in the members' notebooks, a copy of which is attached as Appendix B, setting forth the objectives and proposed activities as submitted to the Oregon Traffic Safety Commission and included with the request for federal funding.

In connection with the proposed administrative adjudication system, Mr. Paillette advised that the most notable example of such a system had occurred in New York where it began in 1970. Basically, the New York system was comprised of only one jurisdiction, New York City, whereas in Oregon it was unavoidable that several levels of government would have to be taken into account -- city, county and state. In setting up the system the committee would have to consider the impact of such a revision on the state courts, the fiscal implications to cities and counties, what the probable cost of such a system would be, how it would be established, who would operate it and how it would be funded.

Mr. Paillette described the research materials that had thus far been assembled for the committee's use including information on the New York adjudication system and materials furnished by the Oregon Motor Vehicles Division. Before the committee could begin to lay plans for a proposal for Oregon, Mr. Paillette said they would need to obtain certain empirical data from district courts, justice courts and municipal courts with respect to caseloads, percentage of cases involving so-called minor traffic offenses, the amount of revenue derived, etc.

General Discussion of Motor Vehicle Code Revision Project

Rep. Hampton commented that in past discussions with prosecutors concerning society's sanctions against anti-social conduct, one of the concerns he had heard expressed was that if a process eroded the trial by jury system, it might lead to the point where murder cases would ultimately be tried administratively. Mr. Paillette explained that the proof standard written into the New York law was "clear and convincing evidence." The penalties that attached were fine only, although the defendant could be subject to other sanctions such as license suspension, depending upon the driving record of the individual motorist.

Rep. Bunn pointed out that under existing Oregon law a number of minor traffic offenses could end up as major traffic offenses and asked if those offenses could be redefined in the proposed revision. Mr. Paillette explained that major traffic offenses were specifically set out by statute in ORS chapters 483 and 484, and Rep. Bunn was assured by Chairman Cole that the committee could make whatever recommendations it chose concerning classification of specific offenses.

Senator Carson agreed that the breakdown of offenses in the present code was badly in need of reclassification. He suggested that offenses be broken into at least three categories consisting of (1) the most serious offenses, (2) an intermediate level carrying criminal sanctions, and (3) minor offenses that could be handled administratively which would probably comprise the vast majority of traffic offenses.

Mr. Paillette advised that he and the chairmen had recently discussed with Judge Schwab, Chief Judge of the Court of Appeals, the advisability of forming a consulting committee made up of approximately nine individuals from all parts of the state who would have a particular interest in the work of the Committee on Judiciary. Judge Schwab had indicated he would contact representatives of law enforcement agencies, the district judges, the district attorneys, the Oregon State Bar, League of Oregon Cities, Association of Oregon Counties and Justices of the Peace. Senator Carson proposed also to include on that committee someone to represent bicyclists and suggested the National President of the League of American Wheelmen, Carroll Quimby of the Salem YMCA.

Rep. Hampton asked if New York's experience with the administrative adjudication system had demonstrated any specific need for substantive simplification of their motor vehicle code. Chairman Cole asked Ms. Vinita Howard to reply to Rep. Hampton's inquiry. Ms. Howard advised that New York had implemented the administrative system because of the overwhelming backlog of traffic cases in their courts, and the system was primarily aimed at reducing that backlog. She added that New York's code, so far as rules of the road were concerned, ranked

eighth nationally in compliance with the Uniform Vehicle Code whereas Oregon's ranked forty-seventh. Rep. Hampton noted that apparently the text of excellence was compliance with the Uniform Vehicle Code rather than an independent decision on what the rules of the road should be and asked if the committee's goal was going to be compliance with the Uniform Code. Mr. Paillette replied that it was not, but it would nevertheless be incumbent upon the committee to examine the Uniform Code as well as codes of other states and to evaluate all of the information before deciding which parts would be adopted and which would be rejected.

Chairman Cole asked if it was the committee's consensus that the objectives of the committee for the interim should be two-fold: (1) Study and make a recommendation as to the administrative handling of certain traffic matters and (2) examine the motor vehicle statutes with the end in mind of revising them.

Rep. Hampton questioned that the wisest course would be to begin with the administrative adjudication phase. His concern was that the committee might run out of time before the substantive revision could be completed. Chairman Cole replied that the course discussed with the Traffic Safety Commission was to first make a study and a decision on the administrative phase and then go into the actual statutory revision.

Senator Carson commented that in revising the statutes, it would first be necessary to build the structure but that would not complete the job. It would then be necessary to categorize all the traffic offenses ranging from the most minor offense to negligent homicide. The committee, he said, would undoubtedly find that a large number of traffic offenses could be abolished completely. He suggested using the subcommittee system and assigning one subcommittee the task of studying the adjudication procedure while the other was undertaking the substantive revision.

Mr. Paillette was of the opinion that the committee should attempt to complete both tasks. From the standpoint of the policy issues and the types of decisions that would have to be made, he said, the administrative adjudication system would be the most difficult because it would affect so many -- judges, justices of the peace, city government, county government, state government and the motoring public. While that system was being considered, the staff could also be laying the groundwork for the substantive code revision which could then become the second phase of the committee's work.

Rep. Hampton suggested that only the most minor traffic offenses be included in the initial presentation of the administrative system to the 1975 legislature to assure a minimum of opposition to its inauguration. Rep. Paulus said she was opposed to beginning a venture based on

what could or could not be sold to the legislature. The committee should undertake to make the soundest recommendations possible and assume that the legislature would enact its proposals. Senator Carson added that if the system were designed properly, offenses could be moved up or down one category, depending upon the wishes of the legislature, which should minimize opposition.

Rep. Bunn asked if one of the goals of the committee, in addition to those already mentioned, would be to reduce the number of traffic deaths. Chairman Cole replied that such a reduction was an important part of the goals of the committee. Mr. Paillette added that the Traffic Safety Commission would not be interested in funding the project if they did not feel there was a reasonable anticipation that an administrative adjudication system together with a revision of the motor vehicle code would improve the traffic fatality and traffic collision situation in the state.

In response to a question by Senator Carson, Mr. Paillette said he anticipated that the committee would be working closely with both the Traffic Safety Commission and the Motor Vehicles Division on a regular basis. The Traffic Safety Commission, he said, looked upon the project as a contract wherein the committee was contracting with the Commission to prepare a finished product, i.e., a revision of the motor vehicle code as well as a proposed administrative adjudication system, assuming this committee decided to propose such a system for the State of Oregon.

Mr. Gil Bellamy advised that the Traffic Safety Commission's role in the committee's deliberations would be to act as a resource agency without submitting pre-formed opinions or requesting specific legislation. One of the federal requirements the Commission was required to meet each year, he said, was to prepare a comparison of state laws with the Uniform Vehicle Code and that information would be made available to the committee. In some instances, he said, Oregon was ahead of the Uniform Code, one example being that the Code had only recently approved the procedure of turning right against a red light.

Chairman Cole asked Mr. Bellamy if the Traffic Safety Commission could furnish information on the handling of traffic matters in the courts, numbers and types of offenses and the number of offenses reduced from other charges. Mr. Bellamy said they did not have those statistics but the State Court Administrator was regularly surveying the courts and that information should be available from him. Through his Commission, he said, the committee would have available the full resources of the National Traffic Safety Commission and the Highway Research Board of the National Academy of Sciences.

Mr. Dean Blakely indicated he would be attending all committee meetings as a representative of the Traffic Safety Commission. Although federal approval of the requested funding for the committee had not yet been received, he said no problems had been encountered and he estimated approval to be about three weeks away.

Ms. Vinita Howard called attention to the workbook furnished to each member of the committee containing a detailed comparison of the rules of the road in Oregon with those of the Uniform Vehicle Code. Some of the differences, she said, were very minor but there were other statutes which were at variance in rather significant areas of the law.

Ms. Howard also submitted, as a suggested starting point, a draft containing additions that would have to be made to the Oregon rules of the road to bring them into conformity with the Uniform Vehicle Code. The second draft she gave the committee set forth revisions of the rules of the road which would bring Oregon into compliance with the Uniform Code.

Ms. Howard advised that the Motor Vehicles Division had a complete print-out of all traffic violation convictions reported to the division in 1972. There were, she said, more than 300,000 traffic convictions reported to them each year. She thought it might be possible to program their computer to break out the number of reported traffic violation convictions by district court, municipal court and justice court. Senator Browne asked if the data could also be broken down by offense and Ms. Howard said she believed that was a possibility. She indicated she also had available a volume showing the number of convictions categorized by age of driver plus statistics on types of convictions for violations of traffic laws involved in accidents of various types.

Senator Carson recalled that the State Court Administrator had conducted a study on how often DUIL charges were reduced to reckless driving and these would be important statistics for the committee to have in determining how the present laws were being enforced. The study showed, he said, that in certain courts DUIL charges were invariably reduced to reckless driving.

Senator Browne indicated there was also a Statistics Committee working with the Oregon State Bar, but their statistics did not include data from municipal and justice courts nor were there complete statistics from the district courts. She had been advised that the Statistics Committee, because of its backlog, could not add to its workload for at least another year. She had subsequently discussed this matter with Chief Justice O'Connell and he was of the opinion that it would be possible to begin collecting such information almost immediately.

Rep. Bunn asked if it would be possible from those statistics to compare the number of charges with the number of convictions. Senator Carson advised that Mr. Bellamy had prepared a special form to gather that type of information for the study he had referred to earlier. That form asked questions about convictions, how many charges were reduced, how many defendants pleaded guilty, how many were found not guilty, etc. Mr. Bellamy explained that the form was distributed on a one-time basis and covered one quarter of the year, but it was his understanding that the Statistics Committee planned to continue gathering that type of information.

Following a brief recess, Mr. Tom Fender advised that the group he represented, the Automobile Safety and Equipment Association, was a composite group of wholesalers, retailers, manufacturers and some of the automobile clubs. The statutes relating to equipment, he said, contained many areas where the motoring public was being denied the use of the best available equipment, principally because the law had not kept pace with modern technology. He urged the committee to give consideration to dealing with the equipment statutes because the equipment on an automobile ultimately affected traffic safety. He indicated there were a great many experts available through his association who could provide competent technical assistance to the committee and offered to make those people available. He also suggested that a member of his association be included on the consulting committee which was discussed earlier.

Senator Carson asked if studies had been conducted in such areas as how high bumpers should be from the roadbed, size of bumpers, etc. Mr. Fender replied that he could provide the committee with what his association considered to be a model in bumper height which was basically an adaptation of the federal bumper standards and his association was in a position to furnish technical advice also in such areas as wheel standards, tire standards, etc.

Chairman Cole suggested that the members give Mr. Paillette some specific direction as to which phase of the proposed project they wished to undertake initially. He understood the consensus to be that the committee should first attack the administrative adjudication system and set aside the revision of the motor vehicle code until decisions were made on the administrative aspect. Senator Browne commented that Mr. Paillette had indicated he could begin staff assignments on the code at the same time the committee was considering the administrative aspect so that work could be progressing in both areas. Mr. Paillette confirmed that it would be feasible to begin staff work on the code immediately. At the same time he believed the staff could be used most beneficially in the next 90 days in gathering materials concerning administrative adjudication and also basic statistics with respect to the present workload of the courts.

Senator Carson was of the opinion that the committee should be divided into two subcommittees, one dealing with the administrative phase and the other with the substantive revision. It was not feasible, he said, to attempt to take the full committee through an in-depth study of both projects. Rep. Paulus expressed agreement and suggested that following a meeting of each subcommittee, the full committee could then meet to make decisions on subcommittee recommendations.

After further discussion, all members agreed that the subcommittee system would be followed and that the chairmen would make subcommittee appointments within the next few days. Chairman Cole indicated that the committee would probably meet again toward the end of October, depending upon the work accomplished by the subcommittees in the meantime.

At its meeting on the previous day Senator Carson said the Legislative Administration Committee had discussed interim committee work plans and was going to attempt to eliminate overlap in subject areas so there would be no obvious duplication of effort. That committee was also recommending a so-called "Legislative Week" each month whereby the Emergency Board and all interim committees would meet during one particular week.

Mr. Paillette recommended that the committee hold meetings when there was something concrete to discuss and to act upon rather than on a date scheduled weeks or months in advance. There were times, he said, when it was a disservice to the members to schedule a meeting when the staff was not prepared with something specific to present. Based on his past experience, the "Legislative Week" approach had not worked well and he urged that flexibility be maintained with respect to meeting schedules. Chairman Cole expressed agreement and indicated that if other members had no objection, the Committee on Judiciary would function on that basis.

Lt. Marvin L. Acheson assured the members that the State Department of Police was available as a resource agency and Captain John Williams, head of the Traffic Division, would in all probability be the staff member who would be working with the committee.

Senator Browne asked Lt. Acheson if the State Police had any information available on the number of citations issued, categorized by type of offense. Lt. Acheson replied that such statistics were compiled on a regular basis for the use of the State Police.

Senator Browne introduced Mrs. Marion Embick, a Salem attorney who had served as Counsel to the Senate Judiciary Committee during the

1973 legislative session. Mrs. Embick, she said, was considering accepting the position of Research Counsel to the Committee on Judiciary. Senator Browne expressed the hope that Mrs. Embick would decide to become a member of the staff.

The meeting was adjourned at 11:30 a.m.

Respectfully submitted,

Mildred E. Carpenter, Clerk
Committee on Judiciary

Committee on Judiciary

PROPOSED RULES

1. The Chairmen shall call meetings and set the agenda.
2. The House Chairman and the Senate Chairman shall preside at meetings alternately.
3. A quorum shall consist of three Senate committee members and three House committee members.
4. Official committee action shall require the approval of a majority of the Senate members and a majority of the House members.
5. A motion need not be seconded.
6. Subcommittees may be appointed by the Chairmen.
7. All meetings shall be open to the press and to the public.
8. Meetings may be adjourned or recessed upon motion or upon order of the presiding Chairman.
9. Rules may be changed by a majority vote of the Senate members and a majority vote of the House members.
10. In all cases when the foregoing rules are inapplicable, Mason's Manual of Legislative Procedure shall apply.

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Present Status - Objective - Proposed Activity - Evaluation

- (1) PRESENT STATUS: At the present time, Oregon ranks low in conformance with the Uniform Vehicle Code and traffic law violations, both major and minor, are handled in the traditional traffic court case process.
- (2) OBJECTIVES: One objective of the project is to devise a traffic law administrative adjudication system to improve the processing and deterrent effect of minor traffic offenses. Other objectives are to complete a topical and substantive revision of the Oregon Motor Vehicle Code comparing it with Federal traffic safety standards, the Uniform Vehicle Code and the codes of other states and making changes with the primary purpose of reducing traffic fatalities, injuries and property damage.

The recommendations of the Ad Hoc Task Force on Adjudication of the National Highway Safety Advisory Committee will be considered. Those recommendations are:

- Expand the traffic adjudication component of the traffic law system to embrace both the goals of adjudication and promotion of highway safety, giving equal weight to both purposes.
- Reclassify all but the most serious traffic offenses from the categories of criminal felonies and misdemeanors to a newly created third level of offenses to be known as "Traffic Infractions."
- Structure a governmental traffic offense adjudication subsystem either as part of an administrative agency separate from the judiciary, or within the judiciary.
- Adopt a more simplified, informal and administrative procedural machinery for "traffic infraction" adjudication and sanctioning.
- Develop a Statewide traffic offense case processing management, adjudication and coordination capability which utilizes advanced record keeping, storage, retrieval and dissemination techniques.
- Improve highway safety implementation through traffic adjudication identification of problem drivers, assignment to appropriate driver improvement screening programs and monitoring results.

) OBJECTIVES (Cont'd):

The Emergency Board of the Oregon Legislature will provide funds for this project until November 1, 1973. This is to make provision for the U. S. Congress to pass the appropriation bill making additional traffic safety block grant funds available through NHTSA to state traffic safety offices for projects in fiscal year 1974. The project period funded with Section 402 funds will run from November 1, 1973, through June 30, 1975, with the first grant period running from November 1, 1973, through June 30, 1974, and the second grant period running from July 1, 1974, through June 30, 1975.

(3) PROPOSED ACTIVITIES:

- A. Organization phase. Appointment of committee members by Speaker of the House and President of the Senate. Creation of subcommittees, assignment of areas of responsibility, appointment of staff, establishment of time tables and deadlines.
- B. Coordination phase. Contacting interested groups and individuals regarding the project. Creation of advisory or liaison committees. Fixing channels of communication with appropriate state, county and city agencies.
- C. Research phase. Examination of existing statutory laws and procedures. Compilation and review of number and type of traffic offenses handled annually by the courts. Study of alternative ways of dealing with traffic offenses. Study of the Uniform Vehicle Code, Federal Traffic Safety Standards and laws of other jurisdictions. Exploration of potential effects on all elements of the traffic safety system including the effect on traffic crashes, of changes in existing methods.
- D. Preliminary drafting phase. Initial drafting by staff and subcommittees of proposed changes in the Motor Vehicle Code. Widest possible circulation of preliminary drafts and research papers.
- E. Preliminary hearings phase. Subcommittee meetings to examine preliminary drafts, public hearings, receipt of testimony and exhibits.
- F. Tentative drafting phase. Redrafting as indicated as result of phase "E" by committee and staff. Widest possible circulation of tentative drafts.
- G. Final hearings phase. Additional meetings and public hearings regarding drafts and other recommendations.

(3) PROPOSED ACTIVITIES (Cont'd):

- H. Final drafting phase. Formulation of final draft and report of proposed revision and related recommendations. Widest possible circulation of final draft and report.
- I. Bill drafting phase. Drafting of proposed bills for introduction at 1975 Legislative Assembly.
- J. Legislative phase. Presentation and explanation by committee and staff of proposed legislation for the purpose of securing enactment into law of such legislation.

(4) EVALUATION:

Quarterly Highway Safety Project Reports, signed by the Project Director, will be submitted to the Oregon Traffic Safety Commission by the 10th of the month following the close of each calendar quarter for the duration of the project and/or grant period.

Upon completion of this project, a final Highway Safety Project Report will be submitted to the Oregon Traffic Safety Commission. In addition, a final evaluation will also be submitted to the Oregon Traffic Safety Commission setting forth the activities and accomplishments in relation to the project objectives.

This project will be periodically monitored by Oregon Traffic Safety Commission personnel.

(5) CONSULTANT AGREEMENTS:

The project budget (see attachment) makes allowance for possible limited use of consultants. Standard approved agreements will be used and performance criteria will directly relate the work of legal, fiscal or other technical consultants to specific objectives of the project. The Project Director will submit to the Oregon Traffic Safety Commission all consultant agreements pertaining to this project.