

## MINUTES

ASSEMBLY TRANSPORTATION COMMITTEE  
March 18, 1975

Members Present:           Mr. Glover  
                              Mr. Dreyer  
                              Mr. Howard  
                              Mr. Dini  
                              Mr. Jacobsen  
                              Mrs. Hayes

Members Absent:           Mr. May

Guests                       Representing

Assemblyman Lowman	
John Borda	Highway Safety Coordinator
Grant Bastian	Highway Dept
James Lambert	Nevada Highway Patrol
Virgil Anderson	AAA
Frank Cady	UNR
Erin Swanson	UNR
Dede Doughty	UNR Intern
John Battles	UNR
Dave Sockle	UNR

Chairman Glover called the meeting to order at 4:20 p.m. and announced the purpose of the meeting was to discuss A.B. 225.

A.B. 225 -- Exempts from demerit points system and limits penalty for certain violations of state speed limit set pursuant to federal requirements.

Assemblyman Zel Lowman presented his written testimony (see attache) to the Committee in favor of the Bill.

Grant Bastian, Nevada State Highway Dept, was the first to speak against the Bill. He stated that he really had mixed emotions about the Bill because he would like to see the people of Nevada use all the gasoline possible to help the revenue picture. On the other hand the 55 mph speed limit is a National law and it has been dictated in the law that if the states do not comply, they will not receive National funds for their highways. He then read proof of this in the Public Law Statute 9364.3 Section 154 which said: "The secretary of Transportation shall not approve any project under Section 106 in any state which has 1) a maximum speed limit on any public highway within its jurisdiction in excess of 55 mph or 2) A speed limit on any other portion of a public highway within its jurisdiction which is not uniformly applicable to all types of motor vehicles using such a portion of highway. He said if Federal Funds were not given to Nevada this would mean a loss of \$40 million per year which would mean about 50% of the people in the highway dept. would no longer have jobs.

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Chairman Glover asked what would happen if the Legislature failed to act this session. Mr. Bastian felt the Legislature must act because the only thing the highway dept is operating on now is a resolution passed by the Highway Board in response to the National Emergency Highway Energy Conservation Act passed in January 3, 1974. He felt the state needs a legislative act to operate under and not an administrative decision. Also, he said the Act that the resolution was based on has been repealed by 9364.3 section 154 and so the highway dept in essence has nothing to go by right now. He stated that there are two suits filed right now against the State.

Mr. Dini asked what expressed authority there was in the State law to establish a 55 mph speed limit. Mr. Bastian stated there is a statute that provides the Highway Board authority to take whatever action is necessary to protect Federal aid.

Mr. Jacobsen asked what administrators of other states felt about the 55 mph Federal law, and Bastian answered that Nevada was one of only 3 or 4 states that was actually opposed to the action by the Federal Government.

John Borda, Highway Safety Coordinator, was the next person to testify against A.B. 225. He presented 3 handouts to the Committee (see attached) One was a letter to the Governor from James B. Gregory, Administrator of the National Highway Traffic Safety Administration; one on the fuel saving aspect, and one comparing accidents from 1973-74. He cited many statistics to prove people in Nevada are traveling slower. Consequently the rate of fatalities has dropped, proving that speed does increase the severity of an accident. He stated that nationwide the fatalities have dropped 18%, but the two states that have a similar bill to A.B. 225, Montana and Idaho, have only had a drop of 8% and 10% respectively. He also stated that Idaho has voted in their Assembly to recind their law and it is now before the Senate. He added that the 55 mph law is here to stay and that there is going to be a meeting with all State Governor's representatives in April to show the Federal Government how each individual state is complying with the law.

Mr. James Lambert, Nevada Highway Patrol, was the next person to testify against the Bill. He stated again that the Federal Government will withhold funds if the states do not comply. He also reiterated previous testimony that the Federal Government will be sending out monitors to each state to have the states show what they are doing to comply with the Federal law. As to the safety factors he stated it has been proved that lower speeds reduce fatalities and the severity of wrecks. As to the enforcement factors he stated that the way the bill is written it is almost an unenforcable law. It is not clear and hard to understand. As the bill reads according to lines 16-19, anywhere that the 55 mph is in effect now on any highway that had an existing speed limit previously to reduce accidents, the 55 mph limit will not be enforceable and no points would be given for speeding.

speeding. Two examples of this situation are in Las Vegas where the freeway goes through downtown and the speed limit was previously 65 and in Washoe Valley where the speed limit was previously 60 mph. He said there would also be a problem with the wording in line 2-4 page 2. Who would determine the 25 mile radius of the city?

Mr. Jacobsen asked what instructions has Mr. Lambert given to his patrolman in regards to enforcement. The answer was to enforce the 55 mph speed limit.

Virgil Anderson, AAA, was the next speaker. He said the people he represents had many mixed emotions about this but they could see they have no choice in the matter. At one time he stated the Federal Government was trying to make the speed limit 50 mph for cars and 55 mph for trucks. He would like to see something along these lines but with the changes of making the speed limit 60mph for cars and 55mph for trucks.

Mr. Dreyer asked about Buses. Do they ever get cited they seem to always be going over the speed limit? Mr. Lambert said they do get cited.

Mr. Jacobsen asked if any precedent had been set for fining such as \$1.00 per mile over etc. Mr. Lambert that each case seems to be determined more on its own merits. A person would probably get fined more in a school zone than on the open highway.

Grant Bastian asked that one more thing be included in his testimony against the bill. He then presented evidence from the Department of Transportation from the Federal Register discussing how the speed limit was going to be enforced, how the states would have to prove their enforcement, etc. (see Attached) He also stated that Nevada would probably be one of the first to be monitored and probably would be monitored frequently because of our image against the 55 mph speed limit.

Chairman Glover ended the discussion by stating that it is frightening to see the Federal Government imposing laws on the states and then coming in to the states with monitors to check up on us.

A five minute recess was declared.

After the recess Mr. Jacobsen moved that the Committee reconsider A.B. 292; Mrs. Hayes seconded and the motion was unanimous.

Chairman Glover announced that he had a bill he would like a Committee Introduction on. It would put travel trailers under the registration fee of \$5.50. Mr. Howard moved for committee introduction of the bill; Mr. Jacobsen seconded, and it was unanimous. Chairman Glover also gave the members a copy of the amendments to A.B. 120 which the committee will be considering next week. The meeting was adjourned at 5:20 p.m.

ASSEMBLY

AGENDA FOR COMMITTEE ON TRANSPORTATION

Date Tuesday, Mar 18 Time 3:00 p.m. Room 214

Bills or Resolutions  
to be considered

Subject

Counsel  
requested\*

A.B. 225	Exempts from demerit points system and limits penalty for certain violations of state speed limit set pursuant to federal requirements. Fiscal Note: No (BDR 43-45)	
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AB 292

\*Please do not ask for counsel unless necessary.

TESTIMONY ON AB 225

by Zel Lowman

March 18, 1975

1. As an immediate national reaction to the shortage of gasoline in 1973, the temporary imposition of a 55 mile per hour speed limit might have been justified. When grasping for straws in the midst of emergency, many actions are excusable which time and experience do not sustain. Last week newspaper stories reported gasoline flooding the market and a Saudi Arabia cut of 6.5 million barrels a day in crude oil to maintain the price level. From John P. Henry, Jr., director of Stanford Research Institute's Center for Energy Studies came the report that world oil supplies have already increased 5% or 30 billion barrels in known reserves since the Arab oil embargo and a speculation that within 5 years the U.S. energy shortage will be licked.
2. Yet, the 55 mph speed limit was made permanent in January and applied to us in the West where it is impractical and unnecessary as well as to those in the crowded and largely urban East and Midwest. It is being justified by many who have not done their homework on the large number of lives saved as a result of lower numbers of traffic fatalities so perhaps we should examine the claim.
3. First, Your Nevada Driving Handbook, published by the Nevada Department of Motor Vehicles makes these statements: "More than 50% of all accidents causing injury or death are at speeds under 40 miles per hour. 66% of traffic deaths happen within 25 miles of home. More than 60% of all injury producing accidents occur in urban areas."
4. Second, the National Safety Council has waxed eloquent about the saving of lives being greatly out of proportion to the decrease in driving. This may have been true as Americans responded to the first blush of national energy-saving concern, but traffic fatality figures for the whole year of 1974 (copy attached) show an entirely different story, dropping from a high of 25% decrease at the beginning of the year to 3% at the end as Americans dropped their guard and returned to their careless driving habits.
5. In addition, a December 31, 1974 news release of the Federal Highway Administration says highway travel in the United States decreased 3% over 1973 and admitted in a telephone conversation that a reasonable conclusion is that mileage rather than lower speed may be mainly responsible for lower fuel consumption.
6. Third, reductions in amount of driving are not "across the board". The family breadwinner continued to drive even when gasoline was in short supply. However, weekend recreational driving, a high

accident risk period, (28.6% of driving time, 36% of traffic fatalities on Saturday-Sunday) was down. So was family youth (15 - 24 years) driving, a high risk segment with 21.6% of the drivers and 35.5% of the nation's fatal accidents. With gasoline at its present cost level, these family prohibitions may still be in effect. High risk night driving had to be proportionately reduced because of fuel unavailability.

7. Fourth, traffic professionals find themselves at a loss to explain the drop in the number of accidents on Los Angeles streets not affected by the new speed limits. Jay Browne of the LA Traffic Department speculates that it might result from a new awareness of enforcement, a general drop in traffic, more careful driving and better care of autos. Might these not also account for most of the drop in accidents on speed-limit-controlled highways.
8. Let us now take a closer look at the argument for saving fuel. The 55 mph limit was set after a limited experiment with a small number of autos off an assembly line. I have been unable to find detailed information, but the findings for application across the nation seem questionable. Many Nevadans have written me that they find their mileage as good at 65 or 70 (one Porsche owner claims 80) as at 55 and this mirrors my own finding as I drive between Las Vegas and Carson City this session. Some correspondents report better mileage at the higher speeds, depending on the car.
9. Of course, I have also had some letters from Nevadans against AB 225 and most of these speak of the traffic safety issue which I have already discussed. I also notice opinion surveys which support the 55 mile per hour limit. Certainly one factor which should figure large in the decision on enforcement should be public acceptance and I notice that if I drive open Nevada country at 70 I can pass almost no one. In fact, most of the traffic leaves me far behind. In mid-1974 California Highway Inspector Walter Pudinski, the same fellow who instigated the infamous herding of motorists from the Los Angeles County line to the Nevada State border in February said he could arrest 100,000 speeders (45% of drivers were exceeding 55 mph on urban freeways and 70% on rural freeways in California) if he had the manpower to do it. His staff at that time was issuing 3,626 citations per day against an average of 1,300 the year before. I estimate that if we undertake to really enforce 55 in Nevada we will need to at least double our present highway patrol whose budget request for the next biennium is in excess of \$3,000,000. As a straw in the wind, indicating ability to talk out of both sides of one's mouth, I read with interest in the March issue of Nevada Highway Safety News that Clark County, where enforcement is strongest, has, in the first two months of this year, the worst highway death rate in 10 years. Reasons given are "speed and drinking drivers".

- 10. In our nation's present economic condition, increased productivity is listed as one of the significant factors for improvement. Little publicity attends the fact that the 55 mph limit goes in exactly the opposite direction. I have learned from Motor Trucking Association officials that productivity of drivers and investment is down 12% to 15% as a result of the 55 mph limit and that it would be worse except for drivers who exceed the limit whenever possible. Rest stops were established for 65 mph average and are now largely unusable. The only way truckers can build back a portion of this productivity and stay under 55 is to carry larger volume and weight and I notice this is also generating major opposition.
- 11. There is also a real question concerning the constitutionality of the 55 mph limit as imposed on us by our State Highway Board. Shortly after it was done I asked for and received the attached January 29, 1974 opinion of the Legislative Council Bureau which finds the decisions highly questionable.
- 12. Except on the Interstate Highway System, before the passage of the national 55 mile per hour limit, 15 states and the District of Columbia had general limits of 55 or less and 12 more had 60 so more than half of the populous Eastern states were virtually unaffected. However, because control experts believe all Americans should fit the same mold, it was forced on those of us in the West, many of us here to live away from those very Eastern conditions, one of which is now being extended to us by a not-so-benevolent central government.

Montana shrugged the major effect of the 55 mph limit off when she enacted last year a measure very much like AB 225 (copies). A check with that state's administrator of the Motor Vehicle Division indicated no threats to cut off Federal funds as a result of the new law.

- 13. The ideal speed limit should be appropriate to road and weather conditions and take into account the type of vehicle being driven and the amount of traffic. Since no bureaucrat is likely to be willing to leave these decisions to the driver as Colorado did on open highways when I was growing up there, we have the tendency to try to make us all look alike and the opportunity grasped in each national crisis to further extend control of individual action. As a signal to the Federal government, I urge that we join Montana in this reaction to more control and pass AB 225. I would further urge that this Committee send a resolution to the U.S. Congress urging a raise to 70 miles per hour limits for those states which had such limits or no limits previously.

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March 10, 1975

M E M O R A N D U M

TO: Assemblyman Zelvin D. Lowman  
FROM: Mary Lou Love, Deputy Researcher, Office of Research *MLL*  
RE: 55 MPH Speed Limit

Here are the figures you requested from the National Safety Council:

TRAFFIC FATALITIES BY MONTH

	<u>1973</u>	<u>1974</u>	<u>Percent Decrease</u>
January	4,040	3,090	24
February	3,540	2,660	25
March	4,360	3,270	25
April	4,610	3,510	24
May	4,840	3,750	23
June	5,250	4,330	18
July	5,320	4,380	18
August	5,220	4,600	12
September	4,990	4,230	15
October	5,350	4,500	16
November	4,340	4,050	7
December	3,940	3,830	3
TOTAL	<u>55,800</u>	<u>46,200</u>	<u>17</u>



Revised Copy of  
Montana

Vol 3 Part 1 1974 Pocket

32-2144.4

HIGHWAYS, BRIDGES AND FERRIES

32-2144.4. Subject to Administrative Procedure Act. The establishment of a speed limit pursuant to section 1 of this act [32-2144.1] shall not be subject to the provisions and requirements of the Montana Administrative Procedure Act, section 82-4201, R. C. M. 1947, et seq.

History: En. 32-2144.4 by Sec. 4, Ch. 60, L. 1974.

32-2144.5. Lower speed limits. Nothing in this act shall prohibit any state, county, municipal or other local official, board, or body which has authority to enact laws relating to motor vehicle speed limits from establishing speed limits lower than that required by federal law on any public streets or highways as permitted by law on the effective date of this act.

History: En. 32-2144.5 by Sec. 5, Ch. 60, L. 1974.

~~32-2144.6. Enforcement.~~ (1) A person violating the speed limit imposed pursuant to section 1 of this act [32-2144.1] is guilty of the offense of unnecessary waste of a resource currently in short supply and upon conviction shall be fined not to exceed five dollars (\$5) and no jail sentence may be imposed. Bond for this offense shall be five dollars (\$5). For the purpose of this act only, the fees of the justice of the peace shall be four dollars (\$4) to be remitted as set forth in section 25-311.

History: En. 32-2144.6 by Sec. 6, Ch. 60, L. 1974; amd. Sec. 1, Ch. 248, L. 1974.

Compiler's Notes

Section 6 of Ch. 60, Laws 1974, contains a subsection (2) reading as follows: "No violation of this act shall be recorded or charged against the driver's record of a person convicted of violating this act and that [sic] no insurance company shall hold a violation of this act against the insured and there shall be no increase in premiums due to a violation of this act." Subsection (2) was

omitted in the amendment of the section by Sec. 1, Ch. 248, Laws 1974.

Amendments

Chapter 248, Laws of 1974, inserted the bracketed reference to "32-2144.1" in subsection (1); added the last sentence to subsection (1); and deleted subsection (2) as set forth in the Compiler's Notes, above.

Effective Date

Section 2 of Ch. 248, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 21, 1974.

32-2144.7. Existing statutes not affected. This act in no way affects traffic control statutes and violation of existing statutes shall be prosecuted solely as provided therein.

History: En. 32-2144.7 by Sec. 7, Ch. 60, 1974.

Effective Date

Section 8 of Ch. 60, Laws 1974 pro-

vided the act should be in effect from and after its passage and approval. Approved March 2, 1974.

32-2145. Establishment of special speed zones. (1) If the department of highways determines upon the basis of an engineering and traffic investigation that a speed limit set by section 32-2144 is greater or less than is reasonable or safe under the conditions found to exist at an intersection, curve, dangerous location, or any other part of a highway

under its jurisdiction special speed limit

(2) The department shall give notice of these special speed limits at that part of the highway

(3) The authority to set a special speed limit is a dangerous location

(4) This section does not apply to a wide speed limit.

History: En. Sec. 1, Ch. 56, Ch. 316, L. 1974.

32-2146. When a local authority in charge of engineering and traffic investigation shall determine that a speed limit greater or less than that which is reasonable and safe

1. Decreases

2. Increases to fifty-five (55) miles per hour

3. Decreases to thirty-five (35) miles per hour

(b) A local authority in charge of engineering and traffic investigation shall set a speed limit less than the speed limit

(c) An alteration of a speed limit shall be effective at all times on the appropriate sign on a highway.

(d) The speed limits on all federal, state, or urban arterials shall be in accordance with section 32-

History: En. Sec. 1, Ch. 57, Ch. 316, L. 1974.

Amendments

The 1971 amendment to subsection (d) for "Any alteration of highways or extension of a municipality by local

32-2147. Minimum speed limit for a motor vehicle

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January 29, 1974

M E M O R A N D U M

To: Perry P. Burnett, Acting Legislative Counsel  
From: James Kosinski, Deputy Legislative Counsel  
Re: Imposing a maximum 55 mph speed limit throughout our state highway system. (Supersedes memo dated December 21, 1973.)

On January 16, 1974, the Board of Directors of the Nevada Department of Highways passed a resolution imposing a maximum speed limit of 55 mph on most highways throughout the state. (Appendix A) The resolution stated that it was adopted because the provisions of the "Emergency Highway Energy Construction Act" (Appendix B), signed by the president on January 3, 1974, prohibit the Secretary of Transportation from approving projects under section 106 of Title 23 of the United States Code if a state has not imposed a maximum 55 mph speed limit. Section 106 is the source of congressional authority for the distribution of highway trust funds to the individual states.

The power of the Board of Directors to impose the speed limit is presumably contained in the provisions of NRS 408.245 which provides:

1. The State of Nevada and its department hereby accepts and assents to the provisions of:
  - (a) The Federal Aid Road Act, being an Act of Congress entitled "An Act to provide that the United States shall aid the States in the construction of rural post-roads, and for other purposes," approved July 11, 1916 (c.241,39Stat.355); and
  - (b) The Federal Highway Act, being an Act of Congress entitled "An Act To amend the Act entitled 'An Act to provide that the United States shall aid

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the States in the construction of rural post-roads, and for other purposes,' approved July 11, 1916, as amended and supplemented, and for other purposes," approved November 9, 1921 (c.119,42Stat.212).

2. The state and its department accepts as a continuing obligation any and all acts amendatory or supplementary to such federal acts.

### Conclusion

1. The resolution of the Board of Directors of the Nevada State Highway Department is subject to challenge on the basis that the board lacks legislative authority for such action. NRS 408.245 pertains to the Federal Aid Road Act (1916) and the Federal Highway Act (1921), which were both repealed by Public Law 85-767 passed in 1958.

2. NRS 408.245 is probably unconstitutional under section 1, article 4 of the constitution of the State of Nevada. This statutory provision appears to be an unconstitutional delegation of legislative power.

3. Subsection 2 of NRS 408.245 is probably unconstitutional under section 17, article 4 of the constitution of the State of Nevada. This statutory provision permits the laws of Nevada to be amended without following constitutionally mandated procedures.

4. NRS 408.245 may be unconstitutional under other provisions of section 17, article 4 of the constitution of the State of Nevada. The title may not give adequate notice of the contents of the law.

### I.

A. The provisions of NRS 408.245 were approved on April 1, 1957, as chapter 370, Statutes of Nevada 1957. This chapter was a comprehensive and exhaustive treatment of statutory provisions providing for the construction and maintenance of Nevada's state highways. The Federal Aid Road Act (1916), referred to in paragraph (a), subsection 1 of NRS 408.245, was the initial endeavor by Congress to provide a comprehensive highway system throughout the United States. The Federal

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Highway Act (1921), referred to in paragraph (b), subsection 1 of NRS 408.245, was a major amendment of the Federal Aid Road Act (1916). Since 1916 there have been numerous lesser amendments of the 1916 Act.

As indicated above, NRS 408.245 was adopted in April, 1957. On August 27, 1958, PL 85-767 was approved by the president. This act was entitled "An Act to revise, codify and enact into law Title 23 of the United States Code, entitled 'Highways'." Subsections 1 and 3, section 2 of this Act specifically repealed:

- Act of July 11, 1916 (39 Stat., ch. 241, page 355) (Federal Aid Road Act-1916); and
- Act of November 9, 1921 (42 Stat., ch. 119, page 212) (Federal Highway Act-1921).

NRS 408.245 has not been amended since its enactment in 1957.

It appears, therefore, that subsection 1 of NRS 408.245 is not legislative authority for the Board of Directors of the Nevada State Department to impose a statewide maximum speed limit since these acts have been repealed.

B. Subsection 2 of NRS 408.245 provides that Nevada "\* \* \* accepts as a continuing obligation any and all acts amendatory or supplementary \* \* \*" to the 1916 and 1921 acts.

Most of the cases defining "amendatory" acts were concerned with state constitutional provisions which placed certain restrictions on the enactment of "amendments" as opposed to the enactment of "original" acts. However, some of this judicial reasoning may be helpful and applicable;

"Amendment" of a statute implies its survival and not destruction. It repeals or changes some provision, or adds something thereto. A law is "amended" when it is in whole or in part permitted to remain, and something is added to or taken from it, or it is in some way changed or altered to make it more complete or perfect. Wheeler v. Board of Trustees of Fargo Consolidation School District, 37 S.E.2d 322.

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Whether statute is amendatory or complete in itself is to be determined by comparison of provisions with prior laws remaining in force, and if complete on subject with which it deals, statute is not subject to constitutional objection of amendment by reference, but if it attempts to amend old law by intermingling new and different provisions, or by adding new provisions, it must be regarded as "amendatory" of old law so that law amended must be inserted at length therein. DeMotte v. DeMotte, 4 N.E.2d 960.

"Amendment" is alteration effecting change in draft, or form, or substance of law already enacted or of bill proposed for enactment. Maclean v. Brodigan, 41 Nev. 468, 172 Pac. 375 (1918).

Concluding from these cases, it appears that an act is amendatory only if the prior act, or parts of it, are permitted to remain. In this case the 1958 act repealed the 1916 and 1921 acts in their entirety.

An argument might be made that since the 1916 and 1921 acts were amended numerous times prior to 1958, and, that since some of these amendments were not repealed by the 1958 act, the latter is an "amendment" to these surviving amendments. Sands states that:

On the theory that provisions of the original act reenacted in an amendatory act are a continuation of the original act, it is held that repeal of the original act repeals those provisions of the original act which were reenacted in the amendatory act. Sutherland Statutory Construction, Vol. 1(a), section 22:39, 1972.

From this it appears that nothing of the 1916 and 1921 acts survived the 1958 act.

From the cases I have located, it is not clear whether the 1958 act is "amendatory" to the 1916 and 1921 Acts. However, it seems that the collected authority strongly supports a conclusion that it is not amendatory.

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C. The authority relating to "supplementary" acts also appears to mitigate against the position taken by the highway board. A "supplementary" act is defined as:

That which supplies a deficiency, adds to or completes, or extends that which is already in existence without changing or modifying the original; an act designed to improve an existing statute, adding something thereto without changing the original text. Swanson v. State, 132 Neb. 82, 271 N.W. 264.

The reasonable conclusion to be drawn from this definition is that an act is not "supplementary" if the original act has been repealed.

Though it appears that the 1958 act is not "amendatory" or "supplementary" to the 1916 and 1921 acts, an argument might be developed that the intent of Congress was merely to codify and revise the previous acts. The purpose of the 1958 act was explained in Senate Report No. 1928, which stated:

PURPOSE OF THE BILL

The purpose of this bill is to revise, modify, clarify and enact into law title 23 of the United States Code.

Revision, as distinguished from codification, means the substitution of plain language for awkward terms, reconciliation of conflicting laws, omission of superseded sections, and consolidation of similar provisions. The purpose of this revision is not to change substantive law, but to put that law in a form which will be more useful and understandable.

The first Federal-Aid Road Act was approved on July 11, 1916. Since that date, Congress has enacted about 40 separate laws on the subject, excluding appropriation acts. Many new provisions were inserted in the various enactments. The existing laws contain provisions which are obsolete and which have amended, supplemented, or repealed, expressly or by implication, earlier provisions of law. As a result, the necessity of dealing with these many enactments has made the administration of the Federal-aid highway program difficult. The bill

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will place in a one-package enactment a clear, concise, up-to-date version of all the existing Federal highway laws in an orderly and logical arrangement. While the bill contains certain technical refinements and language changes to conform to existing practices and procedures, it is not intended to change any of the fundamental and underlying concepts of existing Federal highway legislation or to make any changes of real substance.

#### SCOPE OF REVISION

This revision is based upon title 23 of the United States Code and is designed to include all of the permanent provisions of the Federal highway laws which have been enacted from the date of the original law in 1916. Included in this revision are the substantive provisions of permanent law as have been contained in various appropriation acts over the years. It does not include any provisions deemed to be of a temporary nature. (1958 U.S. Code Cong. and Adm. News p. 3942)

I included this report to illustrate that I have not found a clear answer to the issue of whether the 1958 act is amendatory or supplementary to the 1916 and 1921 acts.

I conclude that the resolution of the Board of Directors of the Nevada Department of Highways is subject to serious challenge on the basis that the board probably lacked legislative authority for such action.

## II.

A. Section 1, article 4 of the constitution of the State of Nevada provides:

The Legislative authority of this State shall be vested in a Senate and Assembly which shall be designated "The Legislature of the State of Nevada" and the sessions of such Legislature shall be held at the seat of government of the State.

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Law making powers under the Nevada constitution are reserved to the legislature. The legislature may not delegate to another the power to enact the law, though it may delegate authority or discretion to be exercised under, and in pursuance of, law. (AGO 188, 8-22, 1935)

The provisions of NRS 408.245 vest in Congress the power to write Nevada law. It provides that prospective federal legislation will be the law of the State of Nevada.

There are many cases collected in 133 A.L.R. holding that statutes similar to NRS 408.245 are an impermissible delegation of legislative power. There are a few cases holding to the contrary, but most of these deal with mandatory federal legislation which would be binding on a state in any event because of the "Supremacy Clause" of the U.S. Constitution (Article VI of the Constitution of the United States). Most of the provisions in the various Federal acts pertaining to highways are not mandatory. Instead, compliance is often required as a condition precedent to receiving certain federal funds. Certainly in this particular case (Emergency Highway Energy Construction Act), the provisions are not mandatory.

I conclude that NRS 408.245 is unconstitutional under the provisions of section 1, article 4 of the constitution of the State of Nevada.

B. Section 17, article 4 of the constitution of the State of Nevada provides:

Each law enacted by the Legislature shall embrace but one subject, and matter, properly connected therewith, which subject shall be briefly expressed in the title; and no law shall be revised or amended by reference to its title only; but, in such case, the act as revised or section as amended, shall be re-enacted and published at length.

Subsection 1 of NRS 408.245 provides that the 1916 and 1921 acts are part of the law of the State of Nevada. Subsection 2 of NRS 408.245 provides that Nevada "accepts" amendatory and supplementary acts to the 1916 and 1921 acts.



Memorandum to Perry P. Burnett  
January 29, 1974  
Page 3

However, any Congressional legislation which amended the 1916 and 1921 acts--since such amendments have been prospectively accepted by Nevada--would be effectively "revising" or "amending" a law of the State of Nevada without reference to its title and without its being reenacted and published at length. Both of these procedural requirements are required by section 17, article 4 of our constitution. (AGO 17, 2-17-1923)

I conclude that subsection 2 of NRS 408.245 is unconstitutional under the provisions of section 17, article 4 of the constitution of the State of Nevada.

C. An argument might be made that NRS 408.245 violates those provisions of section 17, article 4 of the constitution of the State of Nevada requiring that a law "\* \* \* shall embrace but one subject, and matter properly connected therewith, \* \* \*". This might be based on the argument that subrogation of the state to federal legislation is of sufficient importance that its specific inclusion in the title of an act is necessary to "\* \* \* prevent surprise or fraud upon legislature by means of provisions in bills of which titles give no intimation, and to apprise the public of subjects of legislation under consideration." State v. Ah Sam, 15 Nev. 27 (1880). While the subrogation of the Nevada Legislature to prospective federal legislation is "related to" the subject matter of the title (State Highways and Roads) (Appendix C), the provision appears to be sufficiently unusual and important to require greater notice in the title.

I am not prepared to conclude that this argument would prevail in court, however, it is a reasonable and possible challenge.

JNK:mjf

RESOLUTION BY THE BOARD OF DIRECTORS OF THE  
STATE OF NEVADA DEPARTMENT OF HIGHWAYS ESTABLISHING  
STATEWIDE SPEED LIMIT

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WHEREAS, on January 3, 1974, President Richard M. Nixon signed the "Emergency Highway Energy Construction Act"; and

WHEREAS, said Act prohibits the Secretary of Transportation from approving any project under Section 106 of Title 23 of the United States Code in any State which has a maximum speed limit on any public highway within its jurisdiction in excess of 55 miles per hour; and

WHEREAS, Section 2(f) of the Act provides that the requirements of Section 2 of the Act (maximum speed limit 55 miles per hour) may be complied with through administrative action lawfully taken by the Governor or other appropriate State official that complies with the requirements of the section; and

WHEREAS, pursuant to the provisions of Nevada Revised Statute 408.245, the State of Nevada and its Department of Highways accepts and assents to the provisions of the Federal Aid Road Act approved July 11, 1916, and the Federal Highway Act approved July 11, 1916, and November 9, 1921, and further accepts as a continuing obligation any and all acts amendatory or supplementary to such federal acts; and

WHEREAS, it has been determined that a nationwide maximum speed limit of 55 miles per hour will conserve fuel during periods of current and imminent fuel shortages; and

WHEREAS, the Board of Directors of the State of Nevada Department of Highways feels that the establishment of a maximum speed limit of 55 miles per hour on the highways under their jurisdiction will be in the best interests

of the citizens of the State of Nevada and of the United States of America.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the State of Nevada Department of Highways, that pursuant to the provisions of the Emergency Highway Energy Construction Act signed January 3, 1974, and the provisions of NRS 408.245 hereinbefore mentioned, the maximum speed limit on the highways under the jurisdiction of this Board shall be 55 miles per hour effective the 1<sup>st</sup> day of March, 1974.

ADOPTED this 16<sup>th</sup> day of January, 1974.

ATTEST:

Stanley D. Scudben  
Secretary to the Board

Presented by:  
Robert A. Eastman  
State Highway Engineer

BOARD OF DIRECTORS, STATE OF NEVADA DEPARTMENT OF HIGHWAYS  
By: Malcolm O'Callaghan  
Chairman

Robert J. [unclear]  
Member

Wilson M. [unclear]  
Member

APPROVED AS TO LEGALITY AND FORM:

Richard A. Edwards  
Deputy Attorney General  
Chief Counsel  
Department of Highways

Begun and held at the City of Washington on Wednesday, the third day of January,  
one thousand nine hundred and seventy-three

An Act

To conserve energy on the Nation's highways.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act be cited as the "Emergency Highway Energy Conservation Act".

Sec. 2. (a) The purpose of this section is to conserve fuel during periods of current and imminent fuel shortages through the establishment of a national maximum highway speed limit.

(b) After the sixtieth day after the date of enactment of this Act, the Secretary of Transportation shall not approve any project under section 106 of title 23 of the United States Code in any State which has (1) a maximum speed limit on any public highway within its jurisdiction in excess of 55 miles per hour, and (2) a speed limit for all types of motor vehicles other than 55 miles per hour on any portion of any public highway within its jurisdiction of four or more traffic lanes, the opposing lanes of which are physically separated by means other than striping, which portion of highway had a speed limit for all types of motor vehicles of 55 miles, or more, per hour on November 1, 1973, and (3) a speed limit on any other portion of a public highway within its jurisdiction which is not uniformly applicable to all types of motor vehicles using such portion of highway, if on November 1, 1973, such portion of highway had a speed limit which was uniformly applicable to all types of motor vehicles using it. A lower speed limit may be established for any vehicle operating under a special permit because of any weight or dimension of such vehicle, including any load thereon. Clauses (2) and (3) of this section shall not apply to any portion of a highway during such time that the condition of the highway, weather, an accident, or other condition creates a temporary hazard to the safety of traffic on such portion of a highway.

(c) (1) For the purposes of this section the terms "highway" and "State" shall have the same meanings as in section 101 of title 23, United States Code, ~~sums apportioned to any State under section~~

(2) As used in this Act, the term "motor vehicle" means any vehicle driven or drawn by mechanical power manufactured primarily for use on public highways, except any vehicle operated exclusively on a rail or rails.

(d) Notwithstanding the provisions of section 120 of title 23, United States Code, sums apportioned to any State under section 104 of title 23, United States Code, shall be available to pay the entire cost of any modification of the signing of the Federal-aid highways for which such sums are apportioned within such State due to a reduction in speed limits to conserve fuel if such change in signing occurs or has occurred after November 1, 1973.

(e) This section shall cease to be in effect (1) on and after the date on which the President declares that there is not a fuel shortage requiring the application of this Act, or (2) on and after June 30, 1975, whichever date first occurs.

(f) The requirements of this section shall be deemed complied with by administrative action lawfully taken by the Governor or other appropriate State official that complies with this section.

Sec. 3. (a) To conserve fuel, decrease traffic congestion during rush hours, improve air quality, and enhance the use of existing highways and parking facilities, the Secretary of Transportation is authorized to approve demonstration projects designed to encourage the use of carpools in urban areas.

(b) Proposals shall be originated by local officials and submitted by the State in accordance with the provisions of section 105(d) of title 23, United States Code. The Secretary of Transportation shall approve for funding those projects which offer reasonable prospects of achieving the objectives set forth in subsection (a) of this section.

(c) A project may include, but not be limited to, such measures as systems for locating potential riders and informing them of convenient carpool opportunities, designating existing highway lanes as preferential carpool highway lanes or shared bus and carpool lanes, providing related traffic control devices, and designating existing publicly owned facilities for use as preferential parking for carpools.

(d) A project authorized by this section shall be subject to, and carried out in accordance with all of the provisions of chapter 1 of title 23, United States Code, applicable to highway projects, except that the Federal share of such project shall be 90 per centum, the Federal share shall not exceed \$1,000,000 for any single project, and only funds apportioned under section 104(b) (3) and (6) of such title shall be available to carry out projects authorized by this section. The Secretary shall not approve any project under this section after December 31, 1974.

(e) The Secretary of Transportation shall conduct a full investigation of the effectiveness of measures employed in the demonstration projects authorized by subsection (a) of this section. In addition, he shall, in cooperation with the Internal Revenue Service, the Environmental Protection Agency, and other appropriate Federal and State agencies, study other measures, including but not limited to tax and other economic incentives, which might lead to significant increases in carpool ridership in urban areas throughout the country, and shall identify any institutional or legal barriers to such measures and the costs and benefits of such measures. He shall report to the Congress not later than December 31, 1974, his findings, conclusions, and recommendations resulting from such investigation and study. Funds authorized to carry out section 307 of title 23, United States Code, are authorized to be used to carry out the investigation and study authorized by this subsection.

Sec. 4. Section 601(d) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1421) is amended to read as follows:

**\*EMERGENCY LOCATOR TRANSMITTERS\***

“(d)(1) Except with respect to aircraft described in paragraph (2) of this subsection, minimum standards pursuant to this section shall include a requirement that emergency locator transmitters shall be installed—

“(A) on any fixed-wing, powered civil aircraft for use in air commerce the manufacture of which is completed, or which is imported into the United States, after one year following the date of enactment of this subsection; and

“(B) on any fixed-wing, powered civil aircraft used in air commerce after three years and six months following such date.

“(2) The provisions of this subsection shall not apply to:

“(A) Turbojet-powered aircraft;

## H. R. 11372-3

"(B) Aircraft while engaged in scheduled flights by scheduled air carriers certificated by the Board;

"(C) Aircraft while engaged in training operations conducted entirely within a fifty-mile radius of the airport from which such local flight operations began;

"(D) Aircraft while engaged in flight operations incident to design and testing;

"(E) New aircraft while engaged in flight operations incident to their manufacture, preparation, and delivery;

"(F) Aircraft while engaged in flight operations incident to the aerial application of chemicals and other substances for agricultural purposes;

"(G) Aircraft certificated by the Administrator for research and development purposes;

"(H) Aircraft while used for showing compliance with regulations, crew training, exhibition, air racing, or market surveys; and

"(I) Aircraft equipped to carry not more than one person."

*Speaker of the House of Representatives.*

*Vice President of the United States and  
President of the Senate.*

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Senate Bill No. 19—Committee on Aviation, Transportation and Highways

CHAPTER 370

AN ACT to amend Title 35 of NRS relating to highways, roads, bridges and parks by creating a new chapter relating to state highways and roads; declaring the legislative intent; defining certain words and terms; creating a department of highways and its board of directors; creating the office of state highway engineer; providing certain funds for public highway purposes; defining and describing the state highway system and designating routes; providing for the construction, improvement and maintenance of highways and for the acquisition and disposal of property for highway purposes; providing penalties for violations thereof; to repeal chapters 401 and 402 of NRS relating to federal and state highways; and other matters properly relating thereto.

[Approved April 1, 1957]



U.S. DEPARTMENT OF TRANSPORTATION  
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION  
WASHINGTON, D.C. 20590

142

7 X  
SLS e

*Borda*

FEB 14 1975

IN REPLY REFER TO:

Honorable Mike O'Callaghan  
Governor of Nevada  
Carson City, Nevada

Dear Gov. O'Callaghan:

Thanks so much again for all your courtesy and time in meeting with me last month. I have been very impressed with the competence and dedication of John Borda and your Highway Safety staff, but your obvious direct support of the program "says it all." My visit with you confirms that we have a sound and determined State-Federal partnership going, and I want to do everything possible to keep it that way.

In that spirit, I want to express my concern about an article appearing last week in a Reno paper which reports on an assemblyman's plan to submit a bill to the Nevada legislature that could seriously erode the impact of the 55 MPH speed limit both in terms of fuel conservation and safety. The newspaper account correctly indicates that the remarkable reduction in highway fatalities during 1974 was not totally the product of reduced speed. We know that reduced travel and other factors accounted for part of the reduction. Nevertheless, we are convinced that a major part of the savings in lives can be credited to lower speeds, and certainly the fuel saved can be well documented, the factor that occasioned the reduced speed limit to begin with.

Another safety concern: besides promoting, or at least winking at speeds higher than 55 MPH, this type of bill could lead to much greater variation in highway speeds, with some motorists observing the nominal limit, and others disregarding it altogether. We know from sad experience that such variations are hazardous, both to the fast and to the slow.

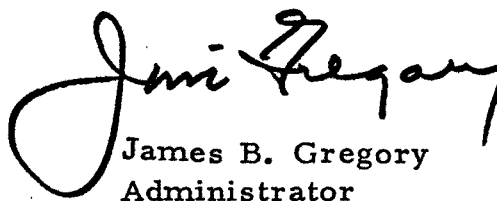


As you know, Congress has now converted the original emergency speed limit measures into permanent form and has charged the Department of Transportation with overseeing the States' enforcement of the 55 MPH limit. The legislation provides that a State which fails to certify that it is enforcing the speed limit stands to lose approval of its Federal-aid highway construction projects. If a bill such as that cited in the article were enacted, there could be serious question as to whether or not a State can certify that it is effectively enforcing the national speed limit. We sincerely hope that legislation of this type will not prove attractive to legislatures, in Nevada or elsewhere.

I wanted to bring these concerns of ours to your attention and will appreciate anything you can do to head off what could be a serious situation.

With all best wishes.

Sincerely,

  
James B. Gregory  
Administrator

Just saw your recent note. Criteria should  
issue in a few days. We'll be  
looking for the proposal re the  
project you mentioned.  
Jim

John -  
Full Saving Aspect  
Ray

Want to know why driving seems to get worse and worse? It's those other cars on the road. The 100,000,000 mark was passed last year - but it doesn't include 23,300,000 trucks and buses in there fighting for road space. Traffic is worse in some places than others; 52.2% of the cars are in 20% of the states: California, Texas, New York, Pennsylvania, Ohio, Illinois, Michigan, Florida, New Jersey and North Carolina. At present rates of growth, the car count will be nearing 150,000,000 by 1984.

\* \* \* \* \*

The 55-m.p.h. limit imposed by the federal government due to the energy shortage is not an arbitrary figure. It is based on the findings of a DOT study of gas consumption in relation to speed. The study showed that a typical 4,000-pound car travels 11.08 miles per gallon at 70 m.p.h., 13.67 miles per gallon at 60 m.p.h., 16.98 miles per gallon at 50 m.p.h., and 14.89 miles per gallon at 40 m.p.h. The study concluded that cars obtain the best gasoline mileage in the range of 50 to 55 m.p.h. and that speeds above and below that range reduce fuel economy.

\* \* \* \* \*

Inflation is so bad that one supermarket put up a sign reading: "Express lane - \$30 or less."

\* \* \* \* \*

ACCIDENT SUMMARY 1973-1974

115

	<u>1973</u>	<u>1974</u>		
Fatal Accidents	234	187	-47	-20%
Fatalities	267	216	-51	-19.1%
Injuries	8,969	8,344	-625	-6.9%
Injury Accidents	6,062	5,429	-633	-10.4%
Property Damage Accidents	18,914	17,321	1,593	-8.4%
Total Accidents	25,210	22,937	-2,273	-9.0%
Vehicle Miles	4,288,000,000	4,095,040,000		-4.5%
Mileage Death Rate	6.23	5.27		-15.4%

**DEPARTMENT OF THE INTERIOR**

Geological Survey  
 [ 30 CFR Parts 211, 216 ]  
**COAL MINING OPERATING REGULATIONS**  
 Extension of Comment Time

On January 30, 1975, the Department of the Interior published as proposed rulemaking at 40 FR 4428 a revised 30 CFR Part 211—Coal Mining Operating Regulations and a repeal of 30 CFR Part 216—Operating Regulations Governing the Mining of Coal in Alaska. In the notice it was stated that written comments, suggestions, or objections with respect to proposed rulemaking could be submitted on or before March 3, 1975. The period for submitting comments, suggestions, or objections is hereby extended so that they may be submitted on or before March 18, 1975.

Dated: March 3, 1975.

C. KING MALLORY,  
 Deputy Assistant Secretary  
 of the Interior.

[FR Doc.75-5953 Filed 3-5-75;8:45 am]

**DEPARTMENT OF AGRICULTURE**

Food and Nutrition Service  
 [ 7 CFR Part 271 ]  
 [Amdt. No. 56]

**FOOD STAMP PROGRAM**

**Submission of State Plans to Governors**

Pursuant to the authority contained in the Food Stamp Act of 1964 (78 Stat. 703, as amended; 7 USC 2011-2026), notice is hereby given that the Food and Nutrition Service, Department of Agriculture intends to amend Part 271 of its regulations governing the operation of the Food Stamp Program, 7 CFR 271. The amendment is for the purpose of implementing Part III of OMB Circular A-95 regarding the submission of State plans and amendments to the State Governor for review and comment on their relationship to other State plans and programs.

Interested persons may submit written comments, suggestions, or objections regarding the proposed amendment to P. Royal Shipp, Director, Food Stamp Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250. In order to be sure of consideration, all submissions must be received not later than April 7, 1975. All comments, suggestions or objections received by this date will be considered before the final regulations are issued. Comments, suggestions, or objections will be open to public inspection pursuant to 7 CFR 1.27(b) at the Office of the Director during regular business hours (8:30 am to 5 pm) at 500 12th Street SW., Washington, D.C., Room 650. The proposed amendment is as follows:

Section 271.8 of Part 271 of Chapter II, Title 7 of the Code of Federal Regulations is amended by adding a new para-

graph (f). The new paragraph of § 271.8 reads as follows:

**§ 271.8 Plans of operation.**

(f) Each State agency shall submit its Plan of Operation and amendments to the State Governor, or his delegated authority, for comment on its relationship to other State plans and programs. The Governor, or his delegated authority, shall be allowed a period of 45 days, prior to submission to FNS, to make such comments, attach them to the plan or amendment and submit them to FNS.

(Catalog of Federal Domestic Assistance Programs No. 10.551, National Archives Reference Service)

(78 Stat. 703, as amended; 7 USC 2011-2026)

JOHN M. DAMGARD,  
 Deputy Assistant Secretary.

FEBRUARY 28, 1975.

[FR Doc.75-5969 Filed 3-5-75;8:45 am]

**DEPARTMENT OF TRANSPORTATION**

Federal Highway Administration  
 [ 23 CFR Part 658 ]

[Docket No. 75-4; Notice 1]

**MAXIMUM NATIONAL SPEED LIMIT**  
 Maximum Vehicle Weight and Size

This notice proposes to amend Part 658 of title 23, Code of Federal Regulations, to implement those provisions of the Federal-Aid Highway Amendments of 1974, Pub. L. 93-643, relating to the establishment of a 55 mph national maximum speed limit, to the enforcement of the speed limit on all public highways, and to the enforcement of the weight and size limitations on the Federal-aid highways.

The national 55 mph speed limit was originally established on January 2, 1974, by Section 2 of the Emergency Highway Energy Conservation Act, Pub. L. 93-239, 87 Stat. 1046. That Act directed the Secretary of Transportation to withhold approval of any Federal-aid highway construction project under section 106 of title 23 of the United States Code in any State that had a speed limit higher than 55 mph. The Federal Highway Administration subsequently issued Part 658 to implement the Act by establishing a process for the States to certify their compliance. All States subsequently established the 55 mph limit, either by legislation or administrative order.

Experience under the new speed limit during 1974 showed a significant drop in speed on those roads that had previously had higher limits. The lower speeds produced a savings in fuel, as expected. In addition, they contributed to a considerable savings in lives. At the end of 1974, the number of highway deaths had fallen to 46,000, a reduction of 9,000 from the year before. These factors led Congress to convert the national speed limit from a temporary measure, which would have expired on or before June 30, 1975,

into a permanent one. The new Act therefore amended title 23, United States Code, by adding a new section 154, National Maximum Speed Limit, which makes State compliance with the 55 mph limit a continuing prerequisite to the Secretary's approval of Federal-aid road projects under 23 U.S.C. 106.

In most respects, this process would be unchanged from the former version of Part 658. To reflect one variation between the temporary and permanent laws, the States could elect to fix their speed limits lower than 55 mph on roads that had formerly had higher limits. In most cases, the States could satisfy this aspect of the regulation by submitting certification information similar to the information they submitted in early 1974.

In addition to section 154, the new Act added a new section 141, *Enforcement of requirements*, to title 23, United States Code. The new section provides that the States shall certify to the Secretary that they are enforcing the 55 mph speed limit established by section 154 and that they are enforcing the weights and sizes requirements on the Federal-aid highway systems, including the Interstate System in accordance with section 127 of title 23, United States Code. The section further provides that the Secretary shall not approve highway projects under 23 U.S.C. 106 in any State which has failed to certify that it is enforcing the speed limit and weight and size requirements. The regulation proposed by this notice would therefore establish a process for the States' certification of enforcement of sections 154 and 127.

With respect to enforcement of the national maximum speed limit, the proposed regulation would direct the States to submit two categories of enforcement-related information in support of their certification that they are enforcing the 55 mph speed limit. The first category of information concerns enforcement agency authority and activity. Several items of information are proposed: the highway mileage subject to the 55 mph limit in each State, the percentage patrolled by State and by local personnel, the enforcement policy statements issued, and the monthly number of citations and warnings issued by State and local law enforcement agencies.

relating to enforcement concerns the actual observance of the speed limit by motorists. A system of speed monitoring has been used by most States in recent years for purposes of highway planning. In late 1973, the Federal Highway Administration requested the States to conduct special speed studies, apart from their usual planning activity, to monitor the effectiveness of the 55 mph limit. The information submitted by the 23 States which responded to the request enabled the Department to compile a

rough nation-wide profile of the observance of the speed limit. The Department considers knowledge of actual speeds to be essential to enforcement planning, and therefore proposes a requirement that the States submit a basic amount of information relating to speed limit observance.

The specific items requested concerning speed observance are aimed at determining vehicle speeds under conditions where the speed limit is the principal constraint on speed. Thus, the observations should be made on level stretches of straight roadway in dry weather during a period of three to four hours in which the traffic volume is light enough to permit speeds higher than 55 mph. The proposed regulation does not specify the number of observations to be made, or the exact roads to be observed. However, the observations should be frequent enough to measure trends in speeds and should be conducted on roads representative of the mix of roads in the State. The Department of Transportation will conduct its own program to monitor vehicle speeds in support of the State programs.

Although the proposed regulation would require the State certifications to contain the foregoing information relating to enforcement, it would not specify an acceptable level of enforcement or a minimum level of speed limit observance. The partial data submitted thus far to the Federal Highway Administration appears to suggest that under conditions of free-flowing traffic approximately 53 percent of the motorists are traveling at 55 mph or less. This represents a significant decline over the speeds recorded a year earlier, and testifies to the willingness of the American public to respond to a national need. Enforcement will have to be at high levels and have a high degree of public visibility if speeds are to be further reduced, but 1974 has shown that a speed reduction program can be effective. A reasonable goal would be to increase the level of observance during free-flowing conditions to 70 percent in 1975, 80 percent in 1976, and 90 percent in 1977 and subsequent years. If these goals can be reached, the nation will realize a significant savings in both energy and lives.

The Federal-Aid Highway Amendments of 1974 included an amendment to section 127 of title 23, United States Code, to permit a modest increase in the weights of vehicles using the Federal-aid Interstate System. This increase was designed to partially offset the economic effects of lower speeds on the trucking industry. To ensure that the States keep careful watch on the vehicles using their roads, the 1974 Amendments require the States to certify that they are enforcing the limits on weights and sizes.

The Federal Highway Administration had previously instituted a system of obtaining weight and size enforcement information from the States. The regulation proposed by this notice would convert the earlier system into the certification process of section 141. The information proposed to be submitted

consists of the following items: (1) the laws and regulations of the State relating to weights and sizes, (2) the names of enforcement agencies, (3) the number of fixed scales in use, (4) the number of portable scales, (5) the hours of scale operation, (6) the number of enforcement personnel, (7) the number of citations, assessments or arrests during the year preceding the certification, and (8) the number of overweight permits issued.

The inclusion of comprehensive data relating to weights and sizes in Part 658 would supplant the earlier regulation on weights and sizes at 23 CFR 1.29. That section would therefore be deleted.

Section 141 specifies that the State certification of enforcement is to be made prior to January 1 of each year. Thus, although the regulation issued by this notice is effective immediately, it cannot require the States to submit enforcement data before January 1, 1976. A State may elect to submit data at any time before January 1.

With respect to State certification of legal compliance with 23 U.S.C. 127 only, the States would still be asked to certify considerably in advance of January 1 of each year, because Federal-aid Interstate Funds for the succeeding fiscal year, under 23 U.S.C. 104(b), must be apportioned on or before that date.

A State that failed to submit its certification in accordance with the proposed regulation by January 1, 1976, would not receive approval for its projects under 23 U.S.C. 106 until such time as a conforming certification is accepted by the Secretary. The FHWA Division offices are available for assistance on speed monitoring techniques and other matters related to this regulation. Responsibility for carrying out the provisions of 23 U.S.C. 141 and 154 will be shared by FHWA and NHTSA, and the office of the Secretary where appropriate.

Interested persons are invited to submit comments on the proposal. Comments should refer to the docket number and be submitted to: National Highway Traffic Safety Administration, Docket Section, Room 5108, 400 Seventh Street SW., Washington, D.C. 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. Relevant material will continue to be filed as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

*Comment closing date:* April 21, 1975.  
(Secs. 106, 107, 114, Pub. L. 93-643, 80 Stat. 2281; 23 U.S.C. 127, 141, 154; 23 U.S.C. 315)

Issued on March 4, 1975.

JOHN W. BARNUM,  
*Acting Secretary.*

It is proposed to revise 23 CFR Part 658 to read as follows:

**PART 658—NATIONAL MAXIMUM SPEED LIMIT; MAXIMUM VEHICLE WEIGHTS AND SIZES**

**§ 658.1 Scope and purpose.**

(a) *Scope.* This Part implements the 55 mph maximum national speed limit requirement of 23 U.S.C. 154, sec. 114, Pub. L. 93-643, and the provisions of 23 U.S.C. 141, sec. 107, Pub. L. 93-643, relating to certification by the States of their enforcement of the speed limit requirements of 23 U.S.C. 154 and the maximum weight and size requirements of 23 U.S.C. 127.

(b) *Purpose.* The purpose of this Part is to conserve fuel and increase safety through enforcement of the 55 mph maximum national speed limit and to preserve highway pavement and structures and increase safety through enforcement of maximum vehicle weight and size.

**§ 658.3 Definitions.**

As used in this Part:

(a) "Act" means the Federal-Aid Highway Amendments of 1974, Pub. Law 93-643, 80 Stat. 2281.

(b) "Highway" means all streets, roads, or parkways under the jurisdiction of a State, including its political subdivisions, and open for use by the general public, and includes toll facilities.

(c) "Motor vehicle" means any vehicle driven or drawn by mechanical power manufactured primarily for use on public highways, except any vehicle operated exclusively on a rail or rails.

(d) "State" means any one of the fifty States, the District of Columbia, and Puerto Rico.

In order to obtain approval of Federal-aid projects under 23 U.S.C. 106, each State shall adopt or maintain maximum speed limits as follows:

(a) The maximum speed limit on any highway in the State shall be 55 mph or less, except that emergency and police motor vehicles may be authorized to operate at higher speeds when necessary to protect health or safety.

(b) Except as provided in paragraphs (c) and (d) of this section, the speed limit on any portion of a highway shall be uniformly applicable to all types of motor vehicles using such portion of highway, if on November 1, 1973, such portion of highway had a speed limit which was uniformly applicable to all types of vehicles using it.

(c) Notwithstanding the provisions of paragraph (b) of this section, a State

may establish a lower speed limit for a motor vehicle operating under a special permit because of any weight or dimension of such vehicle, including any load thereon.

(d) Notwithstanding the provisions of paragraph (b) of this section, a State may specify nonuniform speed limits on any portion of a highway when the condition of the highway, weather, an accident, or other condition creates a temporary hazard to the safety of traffic on such portion of a highway.

**§ 658.6 Statement of compliance.**

Each Governor shall submit to the Federal Highway Administrator, not later than 30 days after issuance of this Part, a statement that the State has complied with section 154 of title 23.

(a) *Contents of statement.* The statement shall include:

(1) A copy of each law, regulation, or administrative order adopted by the State legislature, the Governor, or other State or local official or agency to implement the Act, including all laws, regulations, and orders which specify sanctions for violation of the 55 mph speed limit;

(2) An opinion of the State's legal counsel that the action taken is lawful in cases where the action is not based on a specific, cited provision of State statute (such as the State's assent law) or the State's constitution; and

(3) A statement that speed limit signs have been changed when necessary to reflect modifications in speed limits required by the Act.

(b) *Effect of stated action.* Administrative action lawfully taken by a Governor or other appropriate State official in compliance with the Act and as specified in the State's statement shall be deemed to place the State in compliance with the Act.

In order to obtain approval of Federal-aid projects under 23 U.S.C. 106, the Governor of each State shall certify to the Federal Highway Administration before January 1 of each year that the State is enforcing the national maximum speed limit of 55 miles per hour. The certification shall consist of the following elements:

(a) A statement signed by the Governor certifying that the State is enforcing the national maximum speed limit.

(b) Copies of any laws, regulations, or administrative orders relating to enforcement of the 55 mph speed limit, which were adopted after the date of the statement required by section 658.6, and which have not been included in earlier certifications under this section.

(c) Information relating to enforcement, as follows:

(1) The approximate number of miles of highways having posted or allowable speeds of 55 miles per hour.

(2) The approximate portion of the mileage listed in paragraph (c)(1) of this section on which the State has patrol responsibility, and the portion on which

local law enforcement agencies have patrol responsibility, counting portions concurrently patrolled as both State and local.

(3) The administrative orders or instructions regarding enforcement agency policy on enforcement of the 55 mile per hour limit.

(4) The number of citations and warnings issued by State and by local agencies for violation of the 55 mile per hour speed limit during each month of the year preceding the date of certification.

(d) Information relating to observance of the speed limit by motorists, as follows:

(1) A description of the State program for monitoring speeds, including the number of stations for each type of highway, the basis for determining the number and location of stations, the frequency and duration of operations, and the total sample size and basis for sample selection.

(2) The data obtained from the monitoring program, classified according to highway type (Interstate rural, Interstate urban, other multi-lane divided rural and urban, major nondivided rural, etc.), indicating the average speed, the median speed, the 85th percentile speed, and the percent of motorists exceeding 55, 60, and 65 miles per hour.

In order to obtain approval of Federal-aid projects under 23 U.S.C. 106, each State shall certify to the Federal Highway Administrator that the State is enforcing its laws on all Federal-aid highways and on the Federal-Aid Interstate System in accordance with 23 U.S.C. 127. The certification shall consist of the following elements:

(a) A statement, to be submitted before September 30 of each year by the Governor of the State, that the size and weight laws and regulations in the State conform to 23 U.S.C. 127 and that size and weight limits are being enforced.

(b) A statement, to be submitted before January 1 of each year by the Governor of the State, that all size and weight limits are being enforced, which statement shall include the following information relating to enforcement:

(1) A copy of any law or regulation pertaining to vehicles sizes and weights adopted since the State's last certification;

(2) The name of the agencies enforcing State size and weight limits;

(3) The number of fixed scales in place along the Federal-Aid highway system or in other positions to weigh vehicles which will use the Federal-aid highway;

(4) The number of portable scales controlled by the State which can be used along the Federal-aid highway system;

(5) The days and hours of operation of all such scales;

(6) The number of enforcement personnel used in actual measurement of sizes and weights;

(7) The number of citations, assessments, or arrests made by such personnel for size or weight violations; and

(8) The number of overweight permits issued.

**§ 658.11 Federal reimbursement for sign modifications.**

(a) *Availability of funds.* Federal-aid highway funds apportioned to a State under 23 U.S.C. 104 are available to pay 100 percent of the eligible cost of modifying the signing on Federal-aid highway systems to carry out the intent of the Act.

(b) *Eligible costs.* Any costs incurred by a State after November 1, 1973 for modifying speed limit signs are eligible for participation even though the project was not programmed before the work was done. Eligible costs will normally be limited to the costs of changing the numerals on speed limit signs to reflect a new speed limit.

**§ 658.13 Procedures for obtaining reimbursement for sign modification costs.**

To simplify and expedite payment of the cost of modifying signs to carry out the Act, the following procedures for obtaining Federal-aid highway funds are authorized:

(a) States should submit a single statewide project for each Federal-aid system. The Federal Highway Administration has found that it is in the public interest to permit sign modification work to carry out the Act to be performed by force account.

(b) A complete PS&E submission is not required. Each State must prepare and submit a cost estimate to permit the development of a project agreement.

(c) The Federal Highway Administration will accept simplified cost records. The development and use of an average cost-per-sign figure will be acceptable for cost reimbursement purposes.

**§ 658.15 Effect of failure to certify.**

After January 1, 1976, a State that has not submitted certifications determined by the Secretary or his designee to conform with sections 658.6, 658.7, and 658.9 of this Part shall not receive approval of its plans, specifications and estimates and shall not receive authorization to advertise for bids for construction, until such time as it has submitted such conforming certifications.

[FR Doc.75-6017 Filed 3-4-75;2:43 pm]

**National Highway Traffic Safety Administration**

[ 49 CFR Part 571 ]

[Docket No. 70-27; Notice 12]

**HYDRAULIC BRAKE SYSTEMS**

**Proposed Delay**

This notice responds to 13 petitions for rulemaking on the subject of postponement or revocation of Standard No. 105-75, *Hydraulic brake systems*, 49 CFR 571.105-75, by proposing a 4-month delay of the standard as it applies to passenger cars and indefinite delay as it applies to other hydraulic-braked vehicles. In view of this substantial proposed delay of the standard, the NHTSA anticipates