

# Highway Law Revision Studies: The Researcher's View

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• The purpose of the law revision study that Mr. Williams has just described is to give Wyoming the best code of laws possible for the development of a modern network of highways.

To reiterate a point that he brought out, no matter how fine a code is recommended, it is not worth the paper it is written on unless it is enacted into law. Unless you start out under the general sanction of the legislature and the direct auspices of one of its committees you are doomed to failure. That has been our experience. That is true because most legislatures meet for 60 or 90 days and they are not able in their busy session to go through a complicated recommended code, understand what it is about, and pass on it. A legislature, as you know, must rely on the judgment of a legislative committee that has had an opportunity to work closely with the study process and becomes familiar with the proposals made and purposes behind them.

Another point that I think should be brought out is that a highway code is in effect a set of tools that permit the engineer in the highway department and the county authorities, and others, to go out and construct and thereafter maintain and operate a highway system in the most efficient and economical manner. Now I know that in law school we used to have a lot of feuds with the engineers, but when it comes to building highways the engineer is the one that has to do the job, and the lawyer has to work with him and understand his problems.

In Wyoming, an engineering study

had been made of every mile of highway for the purpose of developing an integrated system of highways. All roads were tested as to traffic service, economic impact, geographic service, integration and circulation, topography, service to national defense, road classification, etc. And as a result of this study by the engineers, it was determined that to develop an integrated system of highways that was best for the State of Wyoming, four systems should be established. One was the State Primary System, limited to 3,700 miles. This should be built to certain standards, and it included the Interstate System mileage in Wyoming. It connected the larger cities and major regional networks. Next was the State Secondary System, built to lesser standards, but also meeting certain criteria. A County System was also laid out, and was to be composed of 13,000 miles. The plan also called for each city to develop an arterial street system. These four systems would form an integrated system for the State, and other roads that were built would serve as access roads to these systems. It was thought that the State's gasoline taxes should be geared to finance these systems. State aid to the counties would go primarily for the 13,000 miles of county roads, and State aid to the cities would be spent on the arterial streets.

So far, the study was almost entirely an engineer's study. But for it to be of any use, the law had to be revised. That is where the proposed code described by Mr. Williams came into the picture.

Another point that deserves to be emphasized is that of intergovernmental relations. The boards of county commissioners or boards of supervisors are generally strong political organizations. Most of them are rather conservative, so it becomes a selling job to bring their support behind the highway law revision. In Wyoming we had excellent advisory committees from both the cities and counties. They were men who were loyal to their own localities and road systems, but they were also willing to think about the interest of the State as a whole. So we were able to bring them along in the study conferences, and they are now in a position to help with the legislation proposed.

Also, changes should not be made in statutes unless there are good reasons for so doing. Moreover, if proposed legislation is to have a good chance for enactment, no matter how necessary or desirable it may be from the standpoint of its proponents, every effort should be made to apprise fully the legislative body of the revisions recommended and the objectives to be achieved.

It is therefore important to make it easy for the recommendations to be readily analyzed and understood. Our study procedure takes this into account. We use columns in which the various sections can be read and compared with each other. In the middle column is the proposed code; in the left-hand column is the old law as it now exists; and in the right-hand column is the explanation of any changes that have been made.

As to suggested techniques for law revision studies, the Automotive Safety Foundation has prepared a series of figures that describes the various steps that we have found helpful.

The first step (Fig. 1) in a law study is to review the law and rearrange it where necessary. The highway law is classified and placed in functional categories, using where applicable those developed in a national study by the Highway Re-

search Board. That simply means that you collect all the laws relating to highways, wherever they may be located in your code, and arrange them so that the various functions of the highway program can be viewed together. Where it is possible to work with it, the existing arrangement of laws within the code should be preserved.

What are the categories or functions that ought to be covered by law in order to provide the necessary powers for highway programs? Figure 2 shows the list that Mr. Williams read in connection with the study undertaken in Wyoming. Of course, some of these categories involve more work than others. In the present Wyoming law there is only one definition; in the draft that has been prepared there will be between 90 and 100 definitions. The highway system classification is based entirely on the engineering survey's recommendations. In highway administration we found that only one county in the whole State had its own county engineer. If the counties are going to administer their programs effec-

The First Step - **REARRANGEMENT**

The highway law is classified and placed into functional categories using, where applicable, those developed in a national study by the Highway Research Board

Figure 1.

**FUNCTIONAL CATEGORIES**  
Which Might Apply

Legislative Intent	Location & Design	Bridges
Definitions	Contracts	Drainage
Highway Administration	Construction & Maintenance	Public Utilities
System Classification	Equipment & Materials	Financing
Planning & Research	Programming	Federal Aid
Land Acquisition	Intergovernmental Relationships	Penalties
Control of Access	Traffic Engineering	Miscellaneous

Figure 2.

The Second Step - **REVIEW**

**INCONSISTENCIES**

**AMBIGUITIES**

**DUPLICATION**

**OBSELETE PROVISIONS**

**SECTIONS REPEALED  
BY IMPLICATION**

The law  
is reviewed  
to remove  
possible

Figure 3.

tively, they will have to have engineering assistance, and the study recommends that each county employ its own engineer. In some counties, and also in the case of some cities, it may make better sense for several units of government to join together and employ one engineer to serve a consolidated area. But these are optional provisions that will make it possible at least for the units at these levels of government to have specialized technical assistance which they have lacked so far. In the traffic engineering part, the proposed code used a great deal from the new manual because conformance with the manual is required on Federal-aid highways.

The study did not go into matters of financing because policy decisions involved in raising and allocating highway funds should be handled, we think, by specially constituted groups working with the legislative committee responsible for financial matters. In Wyoming the counties and cities are getting together through special committees and working out their position with the State legislature. But aside from finance, practically all of the highway code is what I have called "engineering law."

Arranging the law according to functional categories has the advantage of providing an outline for the major subdivisions of a revised code (Fig. 3). This outline also provides a framework for reviewing the material that has found its way into the existing body of highway law that may be repetitious, obsolete, or re-

The Third Step - **EVALUATION**

The substantive law is evaluated in conjunction with

- ➔ COURT DECISIONS
- ➔ ATTORNEY GENERAL OPINIONS
- ➔ TECHNICAL FINDINGS OF HIGHWAY RESEARCH BOARD

*This helps to determine whether the law includes all essential elements so as to meet modern highway needs*

Figure 4.

pealed by implication; ambiguities and inconsistencies can also be identified and earmarked for removal by the legislature. Wyoming did not have a great deal of this type of law, but in other States where we have helped conduct highway law studies we have found that a great deal of good came from such a housecleaning. In Michigan's study a few years ago it was found that there were 103 different statutes, containing over 1,000 sections of law, which made up the existing body of highway law. When we got through with this second step in the study, practically one-third of the law had been removed because of repetitions, repeals by implication, etc. You can imagine how difficult it was prior to this time for the Attorney General to render an opinion on a matter of highway law. Thus, the results of this step can help materially by showing where inconsistencies, ambiguities, duplications, obsolete and repealed laws should be eliminated.

The third step (Fig. 4) in this technique that has been successfully used in highway law revision studies involves evaluation of the substantive provisions of the law after it has been arranged for study. This evaluation should be done against a background of court decisions, Attorney General's opinions, and the technical findings of comparative studies such as those published by the Highway Research Board. We realize that many times you have a court decision that you do not like. It can often be corrected by legislation, but this can

## IN THE EVALUATION OF THE LAW...

Determination and recommendations for improvement must be made with the cooperation and advice of the officials of all highway agencies — state, county, city

Figure 5.

be done only if you carefully review the body of interpretative law that has grown up through the opinions of the courts and the Attorney General. The technical findings of the Highway Research Board can also be of value in this process. In Wyoming we used a number of special reports of the Board, and these gave us an over-all picture of what the other States had and what they did in practice.

One of the most important aspects of the whole study is shown when we come to the determination and recommendation of improvements (Fig. 5). This must be done with the cooperation and advice of the officials of all the highway agencies—State, county and city—that are affected.

The construction engineer knows more about the problems involving construction than probably anyone else, because he lives with it daily. He may not be able to tell you technically whether a policy should be made by statute or administrative determination, but he certainly knows when an improvement is needed. And you cannot give him the best possible set of legal tools unless you find out from him what his problems are and what he suggests as the solution. This also applies to sitting down with the county and city administrative officials, too. The Wyoming law which placed responsibility in the State highway department for constructing and maintaining city streets on the State highway system opened up a whole world of problems of coordinating State and local governmental programs. The question of drainage was also one of the same type.

## WHAT ARE THE ADVANTAGES OF SUCH A STUDY...

It will lead to the development of a modern highway code that will benefit



Figure 6.

All of this adds up to a study which can be of tremendous value to the legislature when it approaches the task of revising its body of highway laws and making it more logical and workable (Fig. 6). For example, in Wyoming, there was one section of the old law that covered about five or six different subjects. It created the State highway department, the highway commission, it provided for the duties of the various officials, it dealt with the Attorney General's duties, etc. In the proposed code these several provisions were broken into five different sections, each one dealing with related matters. The substance

### HOW . .



By providing Legislators with an orderly guide for future legislation



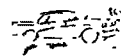
By giving Highway Officials clear-cut authority and responsibility for efficient management



By diminishing the Court's problems in interpreting the law

Figure 7.

### AND FINALLY



By giving the Public increased value for every highway tax dollar through the efficiencies and economies resulting from an up-to-date body of highway law

Figure 8.

of these sections was not changed, but it is now better arranged for the legislature and officials to work with.

These benefits are summarized in Figures 7 and 8. The legislature, the highway officials, and the courts all benefit by a clearer, more orderly,

and more logical statement of the law. The public is, of course, the ultimate beneficiary of this work, and rightfully so because it is the public that pays, through its tax dollars, for more efficient and economical highway transportation facilities.

## DISCUSSION

*Mahin.*—What is the present status of the Highway Laws studies of the Highway Research Board?

*Netherton.*—At present there are 15 Special Reports in this series. The most recent one was published in March and dealt with State laws dealing with traffic engineering. A report on highway programming laws will be published in August 1962.

For anyone not familiar with the process of preparing these reports I would like to say that after the research is done the drafts are circulated to specially designated officials in each State, the District of Columbia and Puerto Rico for their review. These people are called the Legal Liaison Representatives of the States for these Highway Research Board studies, and many of you in this room are members of this group. This review provides us with an additional check and source of help to make the studies comprehensive and accurate reflections of the practices in each State. This is a valuable and much appreciated source of assistance.

*Mahin.*—I think after the discussion yesterday the subject of sovereign immunity might well be taken up in a future report. These documents are of immediate application and assistance to the States in the revision of their laws, and as new problems arise they may suggest new fields for research.

*Netherton.*—I think that is exactly what the Board's long-range objective is in expanding its staff to provide attention to legal research. We know that the HRB studies have been used in revision studies and also in the preparation of briefs, so these

ideas on emerging problems are of very real interest. I wonder if those here from Tennessee and West Virginia would tell how they are using the law schools at their State universities to assist in highway law studies. I think this is an important development because State university law schools are a valuable source of research skill and manpower for such studies as this. Maybe the law schools ought to be brought into studies of this and other types to a greater degree.

*A. G. Halkias.*—West Virginia got authority to use State highway funds for this project. Then the State Roads Commission wrote up a memorandum to the various department heads asking them to tell us the problems they thought had developed in their administration of the law. We then set up specific areas that we wanted to investigate. Our study eventually came to cover more than just the legal aspects. It also got into the economic aspects of the highway program. Then we made a contract with West Virginia University to work with us in doing the necessary research. The research is going to be carried on in two projects: one dealing with the highway laws, and of the same type Wyoming is doing, and the other project will take up the economic matters. This contract was recently signed, so we have not yet begun to have results.

*Netherton.*—I know that the Bureau of Public Roads has taken an interest in these studies. Would you like to add anything on this point, Mr. Becker?

*G. D. Becker.*—The Bureau of Public

Roads is taking a strong interest in studies of this kind and would like to encourage them.

*Netherton.*—It has been mentioned that these studies can be financed with so-called Highway Planning Survey funds. To what extent does the Bureau have a responsibility for the project where these funds are used? How do they fit into the organization of the study?

*Becker.*—The Bureau will allocate Highway Planning Survey funds as needed for a project of this kind, and will assist with advice where it is requested, just as Automotive Safety Foundation functioned in Wyoming. We will work on the spot with the State study groups if they desire it, and request it through Bureau channels.

*Williams.*—Title 23, section 307 of the U.S. Code, dealing with highways contains the authority for the use of these funds for research.

*J. A. Shaneman.*—We codified the highway laws of Illinois in 1959. We did it with Highway Planning Survey funds and the assistance of Automotive Safety Foundation advice. We decided before we started codification that it would have to be done under the auspices of the legislature. We did not feel that it was possible for the highway department or any outside organization to draft a bill and take it into the legislature to be enacted. Prior approval of one of the legislature's own committees was absolutely essential. So we got the 1957 General Assembly to set up a codification commission, and we asked for a 15-member commission consisting of 5 senators, 5 representatives, and 5 members-at-large. We were able to give some advice on who would be appointed so that we got a blue ribbon commission. I do not mean that we advised on individual members, but we were able to have experts appointed in certain areas where we

needed competent reviewers. We did something else, too. The man who sponsored the bill was quite apprehensive about the cost of this study, so we deliberately recommended that he appropriate as little as possible. We thought that if there was not so much money invested, the legislature would not be inclined to be so critical of us. We helped out this small appropriation with Highway Planning Survey funds. The commission hired an attorney who was not a highway lawyer, but who had a good deal of experience working on legislative matters for other commissions. He was hired full-time. The commission also had volunteer services from the Legislative Reference Service, and the highway department. We set up a working committee consisting of the chief bill drafter of the Legislative Reference Service who acted as the executive secretary; the highway department furnished a man, and the public agencies represented on the commission were asked to furnish men. These included the municipal league, the county and the township officers, etc. This committee did the hard work of going through the code section by section.

We ended up with a bill about 350 to 400 pages long. It was introduced in the State Senate, passed promptly with only a few minor amendments, and this story was repeated in the Assembly. Thorough preparation had paid off. Since 1959 there have been only a very few minor amendments. We are convinced that the time and effort spent in setting up the study commission was well spent and we would not have gotten our law enacted without it.

*Mahin.*—With respect to coordinating with the Bureau where Highway Planning Survey funds are used. We have made reports of every step taken to the district offices of the Bureau in Wyoming, and this has kept them informed of all that has taken place.