

HIGHWAY 'WORK ZONE' VIOLATIONS

House Bill 5089 (Substitute H-1)
House Bill 5173 (Substitute H-1)
First Analysis (11-4-03)

Sponsor: Rep. Daniel Acciavatti
Committee: Transportation

THE APPARENT PROBLEM:

It is customary during the construction season, while traveling on Michigan's road system, to pass through active building and maintenance sites where drivers are warned by roadside signs to slow their speed. Generally the signs warn, too, that traffic fines assessed for violations of the speed laws and other safe driving provisions of the Michigan Vehicle Code are doubled when a violator commits them while driving in the construction zone.

The policy to assess double fines in construction zones has been in effect since 1996 when the Michigan legislature enacted Public Act 320, which raised the highway maximum speed limit to 70 miles per hour. When the legislature raised the maximum speeds in 1996, its members also cited the need to penalize drivers who ignored the safety of road workers and school children in the slower speed zones that were posted near construction sites and schools. At the time, the Michigan State Police reported that the number of traffic accidents in construction zones statewide had been steadily rising: from about 2,600 in 1991 to nearly 3,000 in 1995, and that speed was a factor in most cases. More recently, the Michigan Road Builders Association has reported an even higher number. From 1990 to 1996, the members of the association experienced each year an average of 5,500 crashes, 2,000 injuries, and 18 deaths. So, the new law that increased speeds also doubled fines for violating the lower speeds in construction zones.

In addition to the doubled fines, the Michigan Road Builders Association began a public education campaign called "Give 'Em A Brake," and utilized enhanced law enforcement in construction zones. Further, a state grant from the Road Builders allowed local construction companies to increase employee training and education.

While doubled fines were an effective threat to slow a speeding driver, road builders and law enforcement

officials suggested that an even greater deterrent would be the points that are assessed to the offending driver's permanent driving record. When points are assessed for violations, the driver's insurance rates generally go up, since insurers are able under the law to add a surcharge to a poor driver's insurance policy, in order to cover the anticipated increased costs stemming from the driver's high accident risk. Generally, the driver's higher insurance rate stays in place for two years, until the points on the record expire.

So, in order to further deter speeding drivers in construction zones on Michigan roads and highways, legislation was passed to increase penalty points, a bill that was enacted as Public Act 149 of 2002.

Recently, however, a Macomb County prosecutor argued before a jury an especially egregious construction zone injury case involving a road worker who came out of a 45-day coma to face over 25 serious health conditions and a years-long recovery. All of his injuries were the result of a reckless driver who traveled at nearly 80 miles per hour through a work zone on I-94 in Macomb County near the Joy Road overpass without a valid driver's license or car insurance. The driver killed the survivor's co-worker immediately upon colliding with the pair of road workers on August 9, 2002. The workers were installing a dynamic lane merge system—a system developed to help motorists get through a work zone safer and more efficiently.

The driver of the vehicle who killed one road worker and seriously injured another was not convicted of any crime in the courts, and has walked away from the accident without paying so much as a fine. According to the county prosecutor who argued the case, the conviction was jeopardized and the driver acquitted because Michigan's construction zone safety law does not have a definition of "work zone."

Legislation has been introduced to add a new definition of “work zone” to the Michigan Vehicle Code, and to clarify the penalties that will befall drivers who injure or kill workers in highway work zones.

THE CONTENT OF THE BILLS:

House Bill 5089 would amend the Michigan Vehicle Code (MCL 257.320a, MCL 257.601b, and 257.627) to add a definition of a work zone.

Under the bill, “work zone” means a portion of a street or highway that meets any of the following:

- is between a “work zone begins” sign and an “end road work” sign;
- for construction, maintenance, or utility work activities conducted by a work crew and more than one moving vehicle, is between a “begin work convoy” sign and an “end work convoy” sign; and
- for construction, maintenance, or utility work activities conducted by a work crew and one moving or stationary vehicle exhibiting a rotating beacon or strobe light, is between the following points: 1) a point 150 feet behind the rear of the vehicle or the point from which the beacon or strobe light is first visible on the street or highway behind the vehicle, whichever is closer to the vehicle; and 2) a point 150 feet in front of the front of the vehicle or the point from which the beacon or strobe light is first visible on the street or highway in front of the vehicle, whichever is closer to the vehicle.

Currently the law prohibits a driver from exceeding a speed of 45 miles per hour (unless otherwise posted) when entering and passing through a designated work area where a normal lane or part of the lane of traffic has been closed due to highway construction, maintenance, or surveying activities. Under the bill, the speed limit would be retained; however, the language would be modified so that a driver would be prohibited from exceeding that speed limit when entering and passing through a “designated work zone.”

Further, currently under the law, the secretary of state records for each licensee, the number of points for each conviction of a driving violation. Included among those violations are three that occur in work areas. They are: three points for exceeding the lawful maximum speed in a work area by 10 miles per hour or less; four points for exceeding the lawful maximum speed in a work area by more than 10 but not more than 15 miles per hour; and five points for

exceeding the lawful maximum speed in a work area by more than 15 miles per hour. Under the bill, these provisions would be retained; however, the points would be assessed for violations in a “work zone” rather than a work area.

Finally, the bill redefines “construction zone” to mean a designated work zone as described in section 627 of the act. Section 627, in turn, describes a designated work zone to be the place where a normal lane or part of the lane of traffic has been closed due to highway construction, maintenance, or surveying activities, and where a person operating a vehicle cannot exceed a speed of 45 miles per hour unless otherwise determined and posted by the state transportation department, a county road commission, or a local authority. Further, the designated work zone is identified with traffic control devices which are in conformance with the Michigan Manual of Uniform Traffic Control Devices.

House Bill 5173 would amend the Michigan Vehicle Code (MCL 257.601b) to clarify the penalties that would befall a driver convicted of injuring or killing a person working in a designated highway work zone. The bill is tie-barred to House Bill 5089 so that it could not become law unless House Bill 5089 also were enacted.

The bill would define “work zone” to mean a designated work area described in section 79a of the code. [Section 79a is the new section of the code that would be added by the enactment of House Bill 5089.] The bill would delete the definition of “construction zone”, and replace all references to ‘construction zone’ with the term ‘work zone’.

Currently under the law, a person who commits a moving violation that has criminal penalties, and as a result causes injury to a person working in the construction zone is guilty of a misdemeanor punishable by a fine of not more than \$1,000, or imprisonment for not more than one year, or both. The bill would retain this provision, but delete the phrase “that has criminal penalties” and replace it with the phrase “for which not fewer than three points are assigned under section 320a” of the code. Also under the current law, a person who commits a moving violation that has criminal penalties and as a result causes death to a person working in the construction zone is guilty of a felony punishable by a fine of not more than \$7,500, or by imprisonment for not more than 15 years, or both. The bill would also retain this provision, but again delete the phrase “that has criminal penalties” and replace it with the phrase “for which not fewer than three points are assigned under section 320a” of the code.

FISCAL IMPLICATIONS:

The House Fiscal Agency notes that House Bill 5089 would have no apparent material impact on state or local costs or revenues. (10-13-03)

ARGUMENTS:***For:***

The threat of higher fines doubled for speeding through construction sites, coupled with points that are assessed on drivers' permanent driving records, compel most drivers to slow their vehicles, making the highways safer for construction workers and drivers alike. However, in order to convict those who violate the speed laws, and who then injure or kill road workers, a clear and concise definition of "work zone" is needed in the Vehicle Code. The need for the new definition is urgent. Already one speeding driver has been acquitted in a Macomb County trial where she was accused of injuring a road worker and killing the survivor's partner. According to the prosecutor in the case, the driver walked away without so much as a fine, because Michigan's law has a vague definition of construction zone. This legislation would replace the law's vague references to 'construction zone' and 'construction area' with the term "work zone," and it would define that term clearly so that those charged with violations within the "work zone" could be penalized for their crimes.

POSITIONS:

The Michigan Department of Transportation supports House Bill 5089. (11-3-03)

The County Road Association of Michigan supports the bills. (10-31-03)

The Michigan Road Builders Association supports the bills. (11-3-03)

The Michigan Concrete Paving Association has indicated support for the bills. (10-29-03)

The Michigan Municipal League supports the bills. (11-3-03)

The Macomb County Prosecutor supports the bills. (11-3-03)

Analyst: J. Hunault

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.