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SFA



BILL ANALYSIS

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Senate Bill 373 (Substitute S-3 as reported)
Senate Bill 374 (Substitute S-2 as reported)
Sponsor: Senator Bill Bullard, Jr.
Committee: Transportation and Tourism

Date Completed: 4-30-01

RATIONALE

In recent years, increases in State spending on road maintenance and repair have led to the presence of more construction crews on the roadways, which in turn has resulted in a higher incidence of accidents involving highway workers. According to the Michigan Road Builders Association, State spending on the repair and maintenance of Michigan's roads increased to \$714 million in 1997, and continued to rise to \$1 billion in 1998 and \$1.2 billion in 1999. Combined with the aggressive driving habits of many motorists, the greater presence of workers on the roadside has raised concerns about the safety of these individuals. According to the Michigan Road Builders Association, no highway construction worker was killed while on the job in the last decade until 1996. Subsequently, a highway construction foreman was killed in 1999 by a hit-and-run driver on Seaway Drive in Muskegon. In addition, a 19-year-old construction firm employee was seriously injured that year when a car hit him as he was working on the northbound side of highway M-5 near interstate I-275 in Farmington Hills. Reportedly, the driver convicted of killing the construction worker in Muskegon was sentenced to 18 months in jail, and the driver who caused the injuries that left the 19-year-old construction worker a paraplegic served 45 days in jail. Some people believe that these sentences demonstrate the need for stiffer penalties for drivers who kill or injure a highway construction worker.

CONTENT

Senate Bill 373 (S-3) would amend the Michigan Vehicle Code to do the following:

- **Prescribe felony penalties for committing a moving violation that caused an injury to or the death of a person working in a construction zone area.**
- **Provide for an enhanced penalty if a violator were drunk and the worker were killed.**
- **Include conviction of the felony among violations that are grounds for license denial, revocation, or suspension.**
- **Establish six driver license points for violations.**

Senate Bill 374 (S-2) would amend the Code of Criminal Procedure to include failure to use due care and causing injury or death to a construction worker in the sentencing guidelines classifications.

Senate Bill 374 (S-2) is tie-barred to Senate Bill 373. A more detailed description of the bills follows.

Senate Bill 373 (S-3)

Injury or Death to Construction Worker

Currently under the Vehicle Code, a person responsible for a moving violation in a construction zone, at an emergency scene, or in a school zone from 30 minutes before school in the morning and through 30 minutes after school in the afternoon, is subject to a fine that is double the fine otherwise prescribed for that moving violation. Under the bill, notwithstanding any other provision of the Code, a person who committed a moving violation that caused injury to a person working in a construction zone area would be guilty of a felony punishable by a maximum

fine of \$1,000 and/or imprisonment for up to two years. A person who committed a moving violation that caused death to a person working in a construction zone area would be guilty of a felony punishable by a maximum fine of \$7,500 and/or imprisonment for up to 15 years.

The Code also requires that, whenever practical, signs designed in compliance with the Uniform Manual of Traffic Control Devices be placed appropriately at a construction zone by the Michigan Department of Transportation (MDOT) or road authority having jurisdiction over the construction zone notifying vehicle operators that for the protection and safety of construction workers, the fine for a moving violation in the work area is double the fine otherwise prescribed for that moving violation. The bill would delete reference to doubled fines, and would require, instead, that the signs notify vehicle operators of the increased fines and penalties.

Death due to Drunk Driving

The Code prohibits a person from operating a vehicle on a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for parking, if the person is under the influence of intoxicating liquor and/or a controlled substance, or has an unlawful bodily alcohol content (OUIL). In addition, a person is prohibited from operating a vehicle when, due to the consumption of intoxicating liquor and/or a controlled substance, the person's ability to operate the vehicle is visibly impaired (OWI). A person who operates a motor vehicle in violation of either of these prohibitions and causes the death of another person is guilty of a felony punishable by imprisonment for up to 15 years and/or a fine of at least \$2,500 but not more than \$10,000. If the person caused the death of a police officer, firefighter, or other emergency response personnel, the person is guilty of a felony punishable by imprisonment for up to 20 years and/or a fine of at least \$2,500 but not more than \$10,000. Under the bill, this penalty also would apply to a person who was operating a vehicle in a manner that caused the death of a person working in the construction zone area.

License Denial or Revocation

The Code prohibits the Secretary of State from issuing a license to a person under certain circumstances, including when a person has been convicted of or received a juvenile disposition for OUIL causing the death of or serious impairment of a body function of another person, or operating a vehicle in a manner that injured or killed emergency response personnel; or, when a person has been charged with unlawful operation of a vehicle after a license has been revoked, suspended, or denied. The bill would add that a license could not be issued when a person was guilty of a felony for causing the death of a person working in the construction zone area.

In addition, the Code requires the Secretary of State, upon receiving the appropriate conviction records, to revoke the operator's or chauffeur's license of a person who has any of certain convictions or combination of convictions. The bill would add to these convictions a moving violation that caused injury or death to a person working in a construction zone area. The Secretary of State also is required to suspend a person's license for 90 days for certain crimes. The bill would add to these crimes a moving violation that caused injury to a person working in a construction zone area.

The bill would add to the definition of "prior conviction", for purposes of these sanctions, a moving violation that caused the death of a person working in a construction zone area. This offense also would be included as a prior conviction in the Code's vehicle immobilization provisions.

In addition, the Secretary of State may not issue a license to a person who is a habitual violator of the criminal laws relating to OUIL or OWI, or who is a habitually reckless driver, based on certain convictions under the Code. Convictions for certain violations are prima facie evidence that a person is a habitual violator or a habitually reckless driver. The bill would add to these convictions a moving violation that caused death to a person working in a construction zone area.

Points

The Secretary of State, within 10 days after receiving a properly prepared abstract from this or another state, must record the date of conviction, civil infraction determination, or probate court disposition, and the number of points for each. Under the bill, a moving violation that caused injury or death to a person working in a construction zone would require six points.

Court Records

Under the Code, court clerks are required to forward an abstract of the court record to the Secretary of State upon a person’s conviction of specified violations, including a violation of the Code’s provisions on approaching and passing a stationary emergency vehicle and causing the death of emergency response personnel. The bill would delete reference to this violation.

Senate Bill 374 (S-2)

The bill would include committing a moving violation causing injury or death to a construction worker, as proposed in Senate Bill 373 (S-3), in the sentencing guidelines classifications, as shown in Table 1.

Table 1

Offense	Category	Class	Stat. Max.
Committing a moving violation causing injury to a construction worker	Person	G	2 years
Committing a moving violation causing death to a construction worker	Person	C	15 years

The bill also would delete from the existing sentencing guidelines classifications agriculture--livestock condemnation and would add to the felony classification: dead animals, third or subsequent violation.

MCL 257.303 et al (S.B. 373)
777.12 (S. B. 374)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Michigan averaged 5,500 construction zone crashes a year from 1991 to 1996, according to the Michigan Road Builders Association. The number of accidents jumped 30% to more than 7,000 in 1997 as spending on road repairs increased. A similar rise occurred in the number of injuries in construction zones, when figures jumped 25% in 1997 and 2,500 injuries were reported. In response to these increases, several initiatives were instituted to increase drivers’ awareness of construction zone hazards. These measures included reducing speed limits in work zones, doubling fines for traffic violations in construction zones, adding more police to patrol construction zones during peak traffic periods, and launching the statewide “Give ‘em a Brake” campaign aimed at educating motorists about construction zone safety. Despite these efforts, many motorists ignore warning signs and drive recklessly in these areas, causing injury and death to other motorists as well as construction workers. Drivers who recently were convicted of either killing or seriously injuring construction workers received comparatively minor penalties. Judges and prosecutors have few tools to use to crack down on aggressive and reckless drivers. By prescribing specific felony penalties for committing a moving violation that caused injury or death to a person working in a construction zone, the bills would establish tough new standards that could serve as a deterrent to driving carelessly in a construction zone.

Opposing Argument

A driver who injures or kills an individual while operating a motor vehicle already can be charged under various sections of the Michigan Penal Code. For example, an individual who operates a vehicle at an immoderate speed or in a careless, reckless, or negligent manner, but not willfully or wantonly, and causes the death of another individual is guilty of a misdemeanor punishable by imprisonment for up to two years and/or a maximum fine of \$2,000 (MCL 750.324). Also, a driver can be charged with manslaughter, which is a felony punishable by

imprisonment for up to 15 years and/or a fine of up to \$7,500 (MCL 750.321). Alternatively, a driver can be prosecuted for first-degree murder (punishable by mandatory life imprisonment) if the act was premeditated (MCL 750.316) or second-degree murder (punishable by any term of years) (MCL 750.317). In addition, a person who operates a motor vehicle in violation of the Vehicle Code's OUIL or OWI prohibitions and causes the death of another person is guilty of a felony punishable by imprisonment for up to 15 years and/or a fine of at least \$2,500 but not more than \$10,000 (MCL 257.625).

Response: The proposed penalties would give prosecutors and judges additional flexibility in charging and punishing offenders. The penalties also would be consistent with those established by Public Act 458 of 2000 for drivers who injure or kill a police officer, firefighter, or other emergency response personnel in the immediate area of a stationary authorized emergency vehicle, including an enhanced penalty if the violator was drunk and killed a worker. In addition, Senate Bill 373 (S-3) would require signs to notify motorists of the penalties, which could help safeguard highway workers.

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FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government. There are no data available to indicate how many offenders a year would be convicted of a moving violation causing injury to a construction worker or a moving violation causing death to a construction worker. These offenses would be incorporated into the sentencing guidelines as a Class G and a Class C felony, respectively. A Class G felony has a sentencing guideline minimum range from 0-3 months to 7-23 months and a Class C felony has a sentencing guideline minimum range from 0-11 months to 62-114 months.

In most cases, offenders convicted of the Class G felony would be subject to probation or incarceration in a local facility, because causing injury to a construction worker would have a maximum penalty of two years. The State would incur the cost of felony probation, estimated at \$4.23 per day, while local units would incur the cost of incarceration, which may vary between \$27 and \$62 per day.

Assuming that five offenders a year would be convicted of causing death to a construction worker and receive the longest minimum sentence, given that the annual average cost of incarceration is \$22,000, the cost to the State would be \$1.0 million.

Also, there would be an indeterminate fiscal impact from adding construction workers to a section that prescribes penalties for operating a vehicle under the influence or while impaired causing the death of an emergency worker. There are no data available to indicate how many offenders are convicted each year of this offense because this section came into effect in March 2001 and conviction data are available only through 1998. The sentencing guideline minimum range for this Class B offense is 0-18 months to 117-160 months.

The bill would have an indeterminate fiscal impact on the Department of State depending on the extent to which the bill would affect the number of driver license revocations. The reinstatement fee for a driver license is \$125 and benefits the Departments of State and Transportation and various drunk driving-related funds.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.