

AUTOMATED SPEED ENFORCEMENT SYSTEMS

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<http://www.house.mi.gov/hfa>

House Bill 4132 (H-4) as passed by the House
Sponsor: Rep. Will Snyder

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4133 as passed by the House
Sponsor: Rep. Mike Mueller

Committee: Regulatory Reform
Complete to 6-28-23

SUMMARY:

House Bill 4132 would amend the Michigan Vehicle Code to allow the Michigan State Police (MSP) and the Department of Transportation (MDOT) to install and use automated speed enforcement systems in work zones on highways or streets under the jurisdiction of MDOT, create a unit within MSP to oversee the use of these systems, create the Work Zone Safety Fund, and make other related changes. House Bill 4133 would make complementary changes to the Revised Judicature Act. The bills are described together below.

Use of automated speed enforcement systems and citations

Currently, although Michigan law does not specifically prohibit the use of an automated system based on recorded images to issue tickets for a traffic violation, section 742 of the Michigan Vehicle Code generally requires a law enforcement officer to witness a violation of the traffic laws in order to issue a citation for a violation that is a civil infraction, such as speeding. A citation also may be issued as a result of an investigation of an accident or, if approved by the prosecutor or attorney for the local unit of government where the violation occurred, an investigation of a complaint by a witness to a violation.

House Bill 4132 would specifically allow MSP and MDOT, by agreement, to authorize the installation and use of an *automated speed enforcement system* in a work zone on a highway or street under MDOT's jurisdiction. A sign indicating that an automated speed enforcement system is being used would have to be posted one mile before the start of the work zone.

An *automated speed enforcement system* would mean an electronic traffic sensor system that does both of the following:

- Automatically detects a vehicle exceeding the posted speed limit with a type of speed timing device.
- Produces a recorded image of the vehicle exceeding the speed limit that shows a clear and legible identification of the vehicle's license plate and the location, date, and time the image was taken.

If an individual was recorded violating the posted speed limit by 10 miles an hour or more in a work zone while workers were *present*, the following would apply:

- For a first violation, or a subsequent violation more than three years after the individual's most recent violation, a written warning would have to be issued on a form authorized by MSP.

- For a second violation within three years of a written warning issued as described above, the individual would be responsible for a civil infraction and would have to pay a civil fine of up to \$150. (These fines would be paid to MDOT.)
- For a third or subsequent violation within three years of the individual's second or subsequent violation, the individual would be responsible for a civil infraction and would have to pay a fine of up to \$300. (These fines would be paid to MDOT.)

Present would mean located in proximity to a roadway that is not protected by a guardrail or barrier.

The bill would exempt an individual operating a police vehicle, a fire department or fire patrol vehicle, or a public or private ambulance from the above provisions.

Civil fines described above would be paid to MDOT. (House Bill 4133 would amend the Revised Judicature Act to make complementary changes regarding this distribution of civil fine revenue.) MDOT would have to deposit any fines that exceed the cost of installing and using automated speed enforcement systems into the Work Zone Safety Fund described below.

Under House Bill 4132, a sworn statement from an automated speed enforcement system operator or a police officer, based on an inspection of a recorded image produced by the system, would be considered prima facie evidence of the facts contained in the image. A recorded image indicating a violation would have to be available for inspection in any proceeding to adjudicate the responsibility for a violation. Any such image would have to be destroyed as soon as the period for contesting the violation had lapsed, including any period for appeals, or as soon as the individual paid the civil fine in full, whichever is earlier.

The following would apply to a recorded image and any other data collected by an automated speed enforcement system:

- They would only be allowed to be used for the purpose of adjudicating a violation under the bill.
- Except to the extent necessary to adjudicate a violation, they would be confidential and exempt from disclosure under the Freedom of Information Act (FOIA).
- They could not be shared with or sold to any private or public third party not involved with installing and using the automated speed enforcement system.

In a proceeding for a violation of House Bill 4132, the prima facie evidence that the vehicle described in the citation was operated in violation of the bill, together with proof that the citation was issued to the registered owner of the vehicle, would create a rebuttable presumption that the vehicle's registered owner was the individual who committed the violation. This presumption would be rebutted by either of the following:

- An affidavit of the registered owner filed by regular mail with the clerk of the court stating that they were not the operator of the vehicle at the time of the alleged violation.
- Presentation before the appearance date on the citation of a certified copy of a police report showing that the vehicle had been reported stolen before the alleged violation.

Notwithstanding section 742 (described above), a citation for a violation under House Bill 4132 could be executed by first-class mail to the registered owner's address as shown in the records of the secretary of state. If the summoned individual fails to appear on the date set out in that citation, a copy of the citation would have to be sent by certified mail, return receipt requested. If the summoned individual fails to appear on either date set out on the mailed citations, the

citation would have to be executed in a manner provided by law for personal service. The court could issue a warrant for the arrest of an individual who fails to appear within the time limit established on the citation if a sworn complaint is filed with the court for that purpose.

Work Zone Safety Fund

House Bill 4132 would create the Work Zone Safety Fund in the state treasury. The state treasurer would direct the investment of money in the fund and would have to credit any interest and earnings to the fund. MDOT would be the administrator of the fund for audits of the fund. As noted above, any civil fines paid to MDOT for a violation of the bill that exceed the cost of installing and using automated speed enforcement systems would be deposited into the fund. MDOT would have to expend money in the fund, upon appropriation, for the purpose of improving worker safety at work zones by doing both of the following:

- Coordinating with MSP and local law enforcement agencies to increase police presence at work zones.
- Funding the use of traffic control devices at work zones that provide greater protection for workers.

Automated Speed Enforcement System Unit

Subject to appropriation, House Bill 4132 would create the Automated Speed Enforcement System Unit in the Department of State Police (MSP). The unit would consist of appointees of the MSP director and would have to do both of the following:

- Oversee the implementation and use of automated speed enforcement systems.
- Train automated speed enforcement system operators to operate and monitor the systems and provide sworn statements as required by the bill.

Report to the legislature

Finally, by March 1 of each year after the effective date of House Bill 4132, MSP would have to submit a report on the use of automated speed enforcement systems to the members of the House and Senate committees with jurisdiction over transportation and make the report publicly available on the MSP website. The report would have to include at least all of the following:

- The number of citations issued.
- The age, ethnicity, race, and sex of the individuals given citations.
- The locations where automated speed enforcement systems are installed and used and where citations have been given.
- An accounting of both the costs of installing and using automated speed enforcement systems and the revenue generated by them.

HB 4132: MCL 257.907 and 257.909 and proposed MCL 257.2c, 257.627c, and 257.907a

HB 4133: MCL 600.8379

Neither bill will take effect unless both bills are enacted.

BRIEF DISCUSSION:

Supporters of the bills argue that they will protect road construction and maintenance workers in Michigan, where there has been an average of fourteen worker fatalities in work zones each year over the past decade. They point to Maryland, which is among the seventeen other states that currently allow the use of automated speed enforcement systems in work zones, where a

similar program has led to decreases in both the number of speeding violations and worker fatalities in work zones. Supporters also argue that the bills would protect not only construction workers, but also police officers, who will no longer need to be stopped along the side of the highway at night to enforce speeding violations.

Critics of the bills note that they would redirect civil fine revenue from its longstanding allocation to public libraries and county law libraries, which was placed in law when several traffic violations were made civil infractions in 1978. Before those amendments, all traffic violations were criminal violations. Civil infractions were created as a new class of traffic violations for which imprisonment was not imposed. The state constitution requires that penal (i.e., criminal) fines be exclusively applied to support public libraries and county law libraries. The allocation of traffic civil fines to those libraries was established as a compromise to offset the loss of penal fine revenue that would result from the decriminalization of traffic violations. Some opponents of the bills argue that this commitment, and the spirit of the constitutional provision, should be honored and that the allocation of civil fine revenue to libraries should thus be protected.

FISCAL IMPACT:

House Bill 4132 would have significant fiscal implications for the Department of State Police, namely by introducing new costs for the Automated Speed Enforcement System Unit created within the department. The bill conditions the creation of the unit on an appropriation, but the bill does not include an appropriation for the unit, so it is unclear what fund sources would be used to support the costs of the unit. MSP projects that the unit would require six FTE positions at a cost of \$985,000 annually, though the actual number of FTEs would depend on the volume of citations and the scope of the program. MSP also indicated that each citation would cost approximately 65 cents, which does not include additional costs that would be incurred if notices were required to be sent via certified mail or if personal service were necessary. MSP would also incur one-time equipment and outfitting costs, which would include information technology expenses. Total costs for equipment and outfitting could be in the vicinity of \$20,000. Ongoing IT costs for lifecycle replacement and warranty fees for such an IT scenario would total approximately \$5,000.

The bill would limit the use of automated speed enforcement systems to streets and highways under MDOT jurisdiction (that is, state trunkline highways) and only in work zones when workers are present. The bill would thus have no impact on local road agencies.

The bill would earmark civil fine revenue from violations of section 627c first to MDOT, by implication for the cost of installing and using automated speed enforcement systems. The bill directs MDOT to deposit civil fine revenue from violations of section 627c in excess of the costs of installing and using automated speed enforcement systems into the Work Zone Safety Fund, established in the bill as a restricted fund for the purpose of improving work zone safety.

The amount of civil fine revenue generated from violations of section 627c cannot be readily estimated at this time, or whether such fine revenue would be sufficient to cover the cost of installation and ongoing use of automated speed enforcement systems.

With regard to the potential violation of its provisions, House Bill 4132 would have an indeterminate fiscal impact on the state and on local units of government. Public and county law libraries would experience a decrease in the amount of funding allocated to them, the

state's Justice System Fund would experience a decrease in the amount funding allocated to it, and local court units would experience an increase in costs.

Currently, under section 909(1) of the Michigan Vehicle Code, civil fine revenue is to be applied to the support of public and county law libraries. In addition, under section 907(12) of the Michigan Vehicle Code, for any civil fines ordered to be paid, the judge or district court magistrate is required to order the defendant to pay a justice system assessment of \$40 for each civil infraction determination, except for parking violations. Revenue deposited into the state's Justice System Fund supports various justice-related endeavors in the judicial branch, the Departments of State Police, Corrections, Health and Human Services, and Treasury, and the Legislative Retirement System.

Under the bill, revenue paid from civil fines would be required to be paid to MDOT. The department would be required to deposit revenue in excess of the cost of installation and use of automated speed enforcement systems into the Work Zone Safety Fund.

The number of individuals who would be responsible for civil infractions is not known. There is no practical way to determine the number of violations that will occur under provisions of the bill, so there is not a way to estimate the amount of revenue that would be lost by libraries or by the state. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases.

POSITIONS:

Representatives of the following entities testified in support of the bills (3-21-23):

- Blue Line Solutions
- Michigan Infrastructure and Transportation Association
- Michigan Laborers Union

The following entities indicated support for the bills (4-11-23):

- Michigan Municipal League
- County Road Association Self-Insurance Fund
- Michigan Paving & Materials Company

The following entities indicated opposition to the bills:

- Michigan Library Association (3-21-23)
- American Civil Liberties Union (ACLU) of Michigan (4-11-23)

Legislative Analyst: Alex Stegbauer
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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.