~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 29, 2017

**H. 4033**

Introduced by Reps. Hixon, Taylor, Blackwell, Clyburn, Allison, Daning, Yow, Erickson, B. Newton, Bennett and Arrington

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Read the first time March 22, 2017.

**THE COMMITTEE ON EDUCATION AND PUBLIC WORKS**

To whom was referred a Bill (H. 4033) to amend Section 56‑5‑1535, Code of Laws of South Carolina, 1976, relating to speeding in work zones and penalties associated with speeding in work zones, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by deleting Section 56‑5‑1535(A)(1), as contained on lines 6 through 17 on page 2, and inserting:

/(1) ‘Highway work zone’ means an area of a roadway, bridge, shoulder, median, or associated right of way, where construction, maintenance, utility work, accident response, or other incident response is being performed. The work zone must be marked by signs, channeling devices, barriers, pavement markings, or work vehicles, and extends from the first traffic control device erected for purposes of controlling the flow of motor vehicles through the work zone, including signs reducing the normal speed limit, to the ‘END ROAD WORK’ sign or the last temporary traffic control device. The signs, channeling devices, barriers, pavement markings, or work vehicles must meet state Department of Transportation standards, the provisions of Section 56‑5‑4700, or National Fire Protection (NFPA) standards, and must be installed properly. /

Amend the bill further, as and if amended, SECTION 1, by deleting Section 56‑5‑1535(D)(1), as contained on lines 18 through 23 on page 3, and inserting:

/(D)(1) A person who commits the offense of endangerment of a highway worker where the highway worker suffers no physical injury is guilty of a misdemeanor, and, upon conviction, must be fined not more than one thousand dollars and not less than five hundred dollars, or imprisoned for not more than thirty days, or both. Notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, an offense punishable under this subitem may be tried in magistrates or municipal court. /

Amend the bill further, as and if amended, SECTION 1, by deleting Section 56‑5‑1535(F), as contained on lines 11 through 19 on page 4, and inserting:

/(F) Any fine imposed pursuant to this section is mandatory and may not be waived or reduced. Sixty‑five percent of the fine must be remitted to the Treasurer and deposited in a special account, separate and apart from the general fund, designated for use by the Department of Public Safety to be used for work zone enforcement. Twenty‑five percent of the fine must be deposited in the State Highway Fund and designated for use by the Department of Transportation to hire off‑duty state, county, or municipal police officers to monitor construction or maintenance zones. Ten percent of the fine must be remitted to the county governing body in which the charge was disposed, or the municipality if the charge was disposed in municipal court.

Renumber sections to conform.

Amend title to conform.

MERITA A. ALLISON for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Introduced on March 22, 2017**

**State Expenditure**

Existing law mandates that it is unlawful for a person to drive a motor vehicle in a highway work zone at a speed in excess of posted limits and establishes the penalty for this misdemeanor offense to be not less than $75 nor more than $200, or imprisonment for not more than 30 days, or both. The bill deletes this provision and modifies the definition of the term “highway work zone.” Previously, this term was defined as the area between the premier and terminal signs demarcating the work zone. The new definition more specifically defines the term as an area of roadway, bridge, shoulder, median, or associated right of way where construction, maintenance, utility work, accident response, or other incident response is being performed. To ensure the flow of motor vehicles through a work zone is controlled, the zone must be demarcated with properly installed devices that meet Department of Transportation standards and include signs reducing the normal speed limit. The bill also adds a new definition of the term “highway worker.” A highway worker is defined as the following persons who perform work in a highway work zone:  a maintenance, repair or construction worker; a public safety officer enforcing work zone-related transportation management or traffic control; and an officer or firefighter, an emergency medical services provider, or other authorized person who removes hazards or responds to accidents or other incidents.

The bill also creates the offense of endangerment of a highway worker for persons operating a motor vehicle within a highway work zone at any time who drive through or around a work zone in a lane not clearly designated for use by motor vehicles traveling through or around a work zone. This offense also applies to drivers who at any time fail to obey traffic control devices erected for the purpose of controlling the flow of vehicles through the work zone except in cases of emergency, avoidance of an obstacle, or the protection of the health and safety of another person. Drivers will not be cited or convicted for endangerment of a highway worker when the offense occurs in the absence of highway workers in either the work zone or in the area proximate to where the act occurs.

A person found guilty of the offense of endangerment of a highway worker whereby the worker suffers no physical injury shall be convicted of a misdemeanor; fined not more than $1,000 and not less than $500, or imprisoned for not more than 30 days, or both; and have two points assessed against his motor vehicle operating record. A person found guilty of the offense of endangerment of a highway worker whereby the worker suffers physical injury proximately caused by the offense shall be convicted of a misdemeanor; fined not more than $2,000 and not less than $1,000, or imprisoned for not more than 60 days, or both; and have four points assessed against his motor vehicle operating record. A person found guilty of the offense of endangerment of a highway worker whereby the worker suffers great bodily injury that creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or functional impairment of a bodily member or organ shall be convicted of a misdemeanor; fined not more than $5,000 and not less than $2,000, or imprisoned for not more than three years, or both; and have six points assessed against his motor vehicle operating record. A person found guilty of the offense of endangerment of a highway worker whereby the worker dies within three years of as approximate result of injury related to the endangerment of the highway worker shall be convicted of the felony of reckless vehicular homicide; fined not more than $1,000 and not less than $5,000, or imprisoned for not more than 10 years, or both; and subject to the same license reinstatement provisions and related conditions as provided for reckless vehicular homicide.in Section 56-5-2910. Section 56-1-720, which defines the schedule of points for traffic violations, will be modified to make conforming changes to the point system as described above.

All fines imposed for endangerment of a highway worker are mandatory and may not be waived or reduced. Fifty percent of each assessed fine shall be remitted to the State Treasurer and deposited into a special account, separate from the general fund, to be used by the Department of Public Safety for work zone enforcement. Twenty-five percent of each assessed fine shall be deposited into the State Highway Fund for use by the Department of Transportation to hire off-duty state, county, or municipal police officers to monitor construction or maintenance zones. In cases where the mechanical failure of a person’s motor vehicle or where the negligence of a highway worker or another person causes an act or omission constituting the offense of endangerment of a highway worker, the driver shall not be cited or convicted for the offense. The bill also repeals Section 56-5-1536 relating to requirements for driving in a temporary work zone and penalties for convictions, comprised of fines of not less than three hundred dollars nor more than $500.

**Judicial Department.**  This bill creates a new offense of endangerment of a highway worker and provides penalties for the offense. It also deletes the existing offense and penalties for speeding in a highway work zone and repeals the provisions and penalties related to the failure to keep a motor vehicle under control, use due caution, yield right of way, and maintain a safe speed in a temporary work zone. While both of these types of cases are heard in summary court, cases tried for the new offense will be heard in summary and general sessions courts. There is no data available to estimate the number of new cases that would be generated at the circuit court level. However, if additional hearings or trials will be held in general sessions court as a result of the bill, it could lead to a backlog in general sessions courts. The department expects to manage any increase in the number of cases within current resources.

**Commission on Prosecution Coordination.** The commission indicates there is no method by which to estimate the number of new cases that may be tried due to the bill’s creation of new crimes. However, the commission expects to manage any additional costs associated with an increase in cases within current resources.

**Commission on Indigent Defense.** The commission indicates there is no method by which to estimate the number of new cases that may be tried due to the bill’s creation of new crimes. However, the commission expects to manage any additional costs associated with an increase in cases within current resources.

**Department of Motor Vehicles.** The agency indicates that this bill will increase expenses by $19,000 for coding and extensive testing to ensure that all external interfaces are working properly and violations are passed to DMV correctly.

**Department of Corrections.** This bill creates a new offense of endangerment of a highway worker and provides monetary penalties or prison sentences, or both, for convictions. Prison sentence times associated with convictions for these offenses range from not more than 30 days to not more than three years. There is no data available to estimate the increase in admissions that may result from the bill, therefore the expenditure impact cannot be determined. The department does expect the prison population to increase once the bill becomes effective.

**State Revenue**

The bill creates the offense of endangerment of a highway worker and provides for punishment by fines or imprisonment, or both. Any fines imposed are mandatory and may not be waived. Fifty percent of each fine is remitted to the State Treasurer and deposited in a special account separate and apart from the general fund. The special account is designated for use by the Department of Public Safety for work zone enforcement. Twenty-five percent of each assessed fine is deposited to the State Highway Fund for use by the Department of Transportation to hire off-duty state, county, or municipal police officers to monitor construction or maintenance zones. Distribution of the remaining twenty-five percent is not specified. If the remaining twenty-five percent is distributed in accordance with existing law governing the distribution of fines, the remaining funds would be distributed among the general fund, specified state agencies and programs, and local government. Assessments and applicable surcharges on convictions would also be distributed among the general fund, specified state agencies and programs, and local government. Because data is not available to estimate the number of convictions or the specific fines that may be imposed, the revenue impact of this bill on the federal funds and other funds is undetermined.

**Local Expenditure**

This bill creates a new offense of endangerment of a highway worker and provides penalties for the offense. It also deletes the existing offense and penalties for speeding in a highway work zone and repeals the provisions and penalties related to the failure to keep a motor vehicle under control, use due caution, yield right of way, and maintain a safe speed in a temporary work zone. While both of these types of cases are heard in summary court, cases tried for the new offense will be heard in summary and general sessions courts. However, because data is not available to estimate the impact on the caseload of the summary courts, the expenditure impact on local government is undetermined.

**Local Revenue**

The bill creates the offense of endangerment of a highway worker and provides for punishment by fines or imprisonment, or both. Any fines imposed are mandatory and may not be waived. Fifty percent of each fine is remitted to the State Treasurer and deposited in a special account separate and apart from the general fund. The special account is designated for use by the Department of Public Safety for work zone enforcement. Twenty-five percent of each assessed fine is deposited to the State Highway Fund for use by the Department of Transportation to hire off-duty state, county, or municipal police officers to monitor construction or maintenance zones. Distribution of the remaining twenty-five percent is not specified. If the remaining twenty-five percent is distributed in accordance with existing law governing the distribution of fines, the remaining funds would be distributed among the general fund, specified state agencies and programs, and local government. Assessments and applicable surcharges on convictions would also be distributed among the general fund, specified state agencies and programs, and local government. Because data is not available to estimate the number of convictions or the specific fines that may be imposed, the revenue impact of this bill for local government is undetermined.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 56‑5‑1535, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO SPEEDING IN WORK ZONES AND PENALTIES ASSOCIATED WITH SPEEDING IN WORK ZONES, SO AS TO DELETE THIS PROVISION AND PROVIDE A DEFINITION FOR THE TERMS “HIGHWAY WORK ZONE” AND "HIGHWAY WORKER", TO CREATE THE OFFENSE OF “ENDANGERMENT OF A HIGHWAY WORKER”, AND TO PROVIDE A PENALTY FOR THIS OFFENSE; TO AMEND SECTION 56‑1‑720, RELATING TO THE POINT SYSTEM ESTABLISHED FOR THE EVALUATION OF THE DRIVING RECORD OF PERSONS OPERATING MOTOR VEHICLES, SO AS TO PROVIDE THAT THE OFFENSE OF ENDANGERMENT OF A HIGHWAY WORKER RESULTING IN NO INJURY IS A TWO POINT VIOLATION, THE OFFENSE OF ENDANGERMENT OF A HIGHWAY WORKER IN WHICH INJURY OCCURS IS A FOUR POINT VIOLATION, AND THE OFFENSE OF ENDANGERMENT OF A HIGHWAY WORKER IN WHICH GREAT BODILY INJURY OCCURS IS A SIX POINT VIOLATION; AND TO REPEAL SECTION 56‑5‑1536 RELATING TO DRIVING IN TEMPORARY WORK ZONES AND PENALTIES FOR UNLAWFUL DRIVING IN TEMPORARY WORK ZONES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 56‑5‑1535 of the 1976 Code is amended to read:

“Section 56‑5‑1535. (A) ~~It is unlawful for a person to drive a motor vehicle in a highway work zone at a speed in excess of the speed limit set and posted by signs. A person violating this section is guilty of a misdemeanor and, upon conviction, must be fined not less than seventy‑five nor more than two hundred dollars or imprisoned not more than thirty days, or both.~~ For purposes of this section:

(1) ‘Highway work zone’ means an area of a roadway, bridge, shoulder, median, or associated right of way, where construction, maintenance, utility work, accident response, or other incident response is being performed. The work zone must be marked by signs, channeling devices, barriers, pavement markings, or work vehicles, and extends from the first traffic control device erected for purposes of controlling the flow of motor vehicles through the work zone, including signs reducing the normal speed limit, to the ‘END ROAD WORK’ sign or the last temporary traffic control device. The signs, channeling devices, barriers, pavement markings, or work vehicles must meet state Department of Transportation standards and must be properly installed.

(2) ‘Highway worker’ means a person who is required to perform work in highway work zones, including:

(a) a person who performs maintenance, repair, or construction;

(b) a person who operates a truck, loader, or other equipment;

(c) a person who performs any other related maintenance work, as required;

(d) a public safety officer who enforces work zone‑related transportation management or traffic control;

(e) a law enforcement officer who conducts traffic control or enforcement operations; and

(f) an officer or firefighter, an emergency medical services provider, or any other authorized person who removes hazards or who responds to accidents and other incidents.

(B) ~~A ‘highway work zone’ is the area between the first sign that informs motorists of the existence of the work zone on the highway and the last sign that informs motorists of the end of the work zone.~~ A person commits the offense of endangerment of a highway worker if the person is operating a motor vehicle within a highway work zone at anytime; and

(1) driving through or around a work zone in any lane not clearly designated for use by motor vehicles traveling through or around a work zone; or

(2) fails to obey traffic control devices erected for the purpose of controlling the flow of motor vehicles through the work zone for any reason other than:

(a) an emergency;

(b) the avoidance of an obstacle; or

(c) the protection of the health and safety of another person.

(C) ~~The penalty imposed by this section applies only:~~ A person shall not be cited or convicted for endangerment of a highway worker unless the act or omission constituting the offense occurs when one or more highway workers are in the highway work zone and in proximity to the area where the act or omission occurs.

~~(1)~~ ~~if a sign is posted at the beginning of the active work zone that states ‘WORK ZONE $200 FINE AND 30 DAYS IMPRISONMENT FOR SPEEDING’;~~

~~(2)~~ ~~to the area between the posted sign and the ‘END CONSTRUCTION’ sign. Signs may be posted at the discretion of the Department of Transportation in the highway work zones designed to comply with work zone traffic control standards contained in the Manual on Uniform Traffic Control Devices published by the Federal Highway Administration.~~

(D)(1) A person who commits the offense of endangerment of a highway worker where the highway worker suffers no physical injury is guilty of a misdemeanor, and, upon conviction, must be fined not more than one thousand dollars and not less than five hundred dollars, or imprisoned for not more than thirty days, or both.

(2) A person who commits the offense of endangerment of a highway worker where the highway worker suffers physical injury and the committing of the offense is the proximate cause of the physical injury is guilty of a misdemeanor, and, upon conviction, must be fined not more than two thousand dollars and not less than one thousand dollars, or imprisoned for not more than sixty days, or both.

(3) A person who commits the offense of endangerment of a highway worker where the highway worker suffers great bodily injury, as defined in Section 56‑5‑2945(B), and the committing of the offense is the proximate cause of the great bodily injury is guilty of a misdemeanor, and, upon conviction, must be fined not more than five thousand dollars and not less than two thousand dollars, or imprisoned for not more than three years, or both.

(4) A person who commits the offense of endangerment of a highway worker where the death of the highway worker ensues within three years as a proximate result of injury received by the highway worker related to the endangerment of the highway worker is guilty of reckless vehicular homicide pursuant to Section 56‑5‑2910, and, upon conviction, is subject to the penalties contained in that section, including license reinstatement and related conditions.

(E) A person who is convicted pursuant to subsection (D)(1), in addition to any other penalty, must have two points assessed against his motor vehicle operating record. A person who is convicted pursuant to subsection (D)(2), in addition to any other penalty, must have four points assessed against his motor vehicle operating record. A person who is convicted pursuant to subsection (D)(3), in addition to any other penalty, must have six points assessed against his motor vehicle operating record.

(F) Any fine imposed pursuant to this section is mandatory and may not be waived or reduced. One‑half of the fine must be remitted to the Treasurer and deposited in a special account, separate and apart from the general fund, designated for use by the Department of Public Safety to be used for work zone enforcement. Twenty‑five percent of the fine must be deposited in the State Highway Fund and designated for use by the Department of Transportation to hire off‑duty state, county, or municipal police officers to monitor construction or maintenance zones.

(G) No person shall be cited or convicted for endangerment of a highway worker for any act or omission otherwise constituting an offense under this section if the act or omission results, in whole or in part, from mechanical failure of the person’s motor vehicle or from the negligence of a highway worker or another person.”

SECTION 2. Section 56‑1‑720 of the 1976 Code is amended to read:

“Section 56‑1‑720. There is established a point system for the evaluation of the operating record of persons to whom a license to operate motor vehicles has been granted and for the determination of the continuing qualifications of these persons for the privileges granted by the license to operate motor vehicles. The system shall have as its basic element a graduated scale of points assigning relative values to the various violations in accordance with the following schedule:

VIOLATION POINTS

Reckless driving 6

Passing stopped school bus 6

Hit‑and‑run, property damages only 6

Driving too fast for conditions, or speeding:

(1) No more than 10 m.p.h. above the posted limits 2

(2) More than 10 m.p.h. but less than 25

m.p.h. above the posted limits 4

(3) 25 m.p.h. or above the posted limits 6

Disobedience of any official traffic control device 4

Disobedience to officer directing traffic 4

Failing to yield right-of-way 4

Driving on wrong side of road 4

Passing unlawfully 4

Turning unlawfully 4

Driving through or within safety zone 4

Failing to give signal or giving improper

signal for stopping, turning, or

suddenly decreased speed 4

Shifting lanes without safety precaution 2

Improper dangerous parking 2

Following too closely 4

Failing to dim lights 2

Operating with improper lights 2

Operating with improper brakes 4

Operating a vehicle in unsafe condition 2

Driving in improper lane 2

Improper backing 2

Endangerment of a highway worker, no injury 2

Endangerment of a highway worker, injury results 4

Endangerment of a highway worker, great bodily injury 6”

SECTION 3. Section 56‑5‑1536 of the 1976 Code is repealed.

SECTION 4. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 5. This act takes effect upon approval by the Governor.

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