

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 277

(The President, *et al.*) (By Request - Administration)

Judicial Proceedings

Environmental Matters

**Vehicle Laws - Speed Monitoring Systems - Statewide Authorization and Use in
Highway Work Zones**

This Administration bill extends authorization for use of speed monitoring systems in school zones statewide. Local law enforcement agencies or their agents or contractors may issue citations or warnings to vehicle owners for speeding at least 12 miles per hour above the posted speed limit. The bill alters the authorization for speed monitoring in Montgomery County such that it applies to violations for speeding in excess of 12 miles per hour above the speed limit on residential highways and limits school zone monitoring to certain times. In addition, the bill authorizes use of work zone speed control systems. State and local law enforcement agencies or their contractors are authorized to issue citations or warnings for speeding at least 12 miles per hour above the posted speed limit in highway work zones that are set up on expressways or controlled access highways where the speed limit is 45 miles per hour or greater. The maximum fine for a citation is \$40. Each local jurisdiction that enforces speed limits with automated enforcement under the bill must report to the Governor and the General Assembly by December 31, 2013, on the effectiveness of speed monitoring systems in the jurisdiction.

Fiscal Summary

State Effect: Special fund revenues may increase about by \$11.6 million in FY 2010, assuming full implementation at the State level of speed control systems in highway work zones. Special fund expenditures increase by \$566,700 in FY 2010 for the State Highway Administration (SHA) to implement work zone speed control systems and by at least \$1.5 million for the Department of State Police (DSP) for enforcement of work zone speed control systems. Transportation Trust Fund (TTF) and other special fund revenues may increase from additional fees and contested citations assessed in jurisdictions that implement school zone speed monitoring systems. General fund expenditures in the District Court may increase significantly due to an expansion in workload.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
GF Revenue	-	-	-	-	-
SF Revenue	\$11,598,400	\$15,625,800	\$14,063,100	\$12,656,900	\$11,391,200
GF Expenditure	-	-	-	-	-
SF Expenditure	\$2,108,000	\$2,209,700	\$2,002,300	\$1,815,800	\$1,647,900
Net Effect	\$9,490,400	\$13,416,100	\$12,060,800	\$10,841,100	\$9,743,300

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The full effect on local finances depends on the extent to which these systems are deployed, and there is limited information based solely on the use of speed monitoring in school zones. Montgomery County speed monitoring revenues may decrease due to the change in the speeding threshold to 12 miles per hour over the speed limit and the limits on hours of operation for enforcement in school zones.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary:

Definitions

A “recorded image” is an image of a part of a motor vehicle recorded by a speed monitoring or work zone speed control system on a photograph, a microphotograph, an electronic image, videotape, or any other medium, which clearly and legibly identifies the entire registration plate number of the motor vehicle and shows at least two time-stamped images of the vehicle and a stationary object near the vehicle. A “speed monitoring system” or a “work zone speed control system” is a device with one or more motor vehicle sensors producing recorded images of motor vehicles traveling at speeds at least 12 miles per hour above the posted speed limit. A “work zone” is a segment of highway identified as a temporary traffic control zone by traffic control devices and where highway construction, repair, utility work, or related activity is being performed, regardless of whether workers are present.

Extension of Speed Monitoring Systems to School Zones Statewide

A speed monitoring system may be placed in a school zone for operation between 6:00 a.m. and 8:00 p.m. Monday through Friday. Before a speed monitoring system may be used in a local jurisdiction, its use must be authorized by the governing body by ordinance or resolution adopted after reasonable notice and a public hearing. The

ordinance or resolution must require the issuance of warnings only during the first 30 days, at a minimum, after the first speed monitoring system is placed in a local jurisdiction. Before activating an unmanned stationary speed monitoring system, a local jurisdiction must publish notice of its location on the local jurisdiction's web site and in a general circulation newspaper in the jurisdiction. The local jurisdiction must also ensure that each school zone sign indicates that speed monitoring systems are used in school zones. For those speed monitoring systems in operation before October 1, 2009 only, the bill exempts Montgomery County from complying with county government authorization provisions, the required 30-day warning period, published notice of the location, and signage in school zones.

Before a county may use a speed monitoring system on a State highway within a municipal corporation, the county must obtain the authorization of SHA and notify the municipal corporation of SHA approval. The county must then allow the municipal corporation 60 days from the date of the county notice to enact an ordinance authorizing the municipal corporation instead of the county to operate a speed monitoring system at that location.

New Authorization for Work Zone Speed Control Systems

A work zone speed control system may be placed within a work zone on a highway that is an expressway or controlled access highway where the speed limit that is established using generally accepted traffic engineering practices is 45 miles per hour or greater. A conspicuous road sign must be placed at a reasonable distance, according to national standards, from the work zone, and the system must be operated by a specified individual who is trained and certified to do so.

A law enforcement agency or its contractor may only issue warnings during the 30 days after the first work zone system is in place. The bill defines "State Police Department" as including the Maryland Transportation Authority police and the Department of State Police.

Training and Recordkeeping

The bill establishes training and recordkeeping requirements for system operators, including the performance of calibration checks as specified by the system manufacturer and an annual calibration check performed by an independent laboratory.

Impact, Payment, and Issuance of Citations

Speeding citations issued from automated enforcement systems may be treated as parking violations. They are not moving violations for the purpose of point assessment, may not be placed on the driving record of the owner or driver of the vehicle, and may not be considered in the provision of vehicle insurance.

Unless the driver receives a citation from a police officer at the time of the violation, a person who receives a citation by mail may pay the specified civil penalty to the issuing jurisdiction or elect to stand trial in District Court. A warning notice may be issued instead of a citation.

In addition to other required information, for work zone violations only, the citation must include at least one recorded image of the vehicle, each with an imprinted data bar that shows the vehicle's speed and the date and time the image was recorded. For other speed monitoring violations, the citation must include a copy of the recorded image. A recorded image from a speed monitoring or a work zone speed control system may be used only to identify the vehicle subject to a speeding violation. A citation must contain notice of the right to have a speed monitoring or work zone speed control system operator present to testify at a trial. The individual who requests the presence of the operator must notify the court and issuing jurisdiction in writing no later than 20 days before trial. A citation must be mailed no later than two weeks after the alleged violation if the vehicle is registered in Maryland, or no later than 30 days after the alleged violation if the vehicle is registered in another state. An agency is prohibited from mailing a citation to a person who is not a vehicle owner.

A recorded image of a motor vehicle produced by a speed monitoring or work zone speed control system is admissible at trial without authentication. A certificate alleging that the speeding violation occurred, that is sworn to or affirmed by an agent or employee of an agency, is evidence of the facts contained therein and is also admissible at trial. Adjudication of liability is to be based on a preponderance of the evidence standard. The District Court may consider the defenses specified in the bill. However, the provision in current law requiring a person who was not operating the vehicle to provide the name, address, and license information of the vehicle operator is repealed.

If the fine is not paid and the violation is not contested, the Motor Vehicle Administration (MVA) may refuse to register, reregister, or suspend the registration of, the motor vehicle. If a contractor deploys or operates a speed monitoring or a work zone speed control system on behalf of State or local law enforcement, the contractor's fee may not be contingent on the number of citations issued.

Any fines or penalties collected by the District Court from school zone speed monitoring are remitted to the Comptroller and distributed to various transportation-related funds. However, for work zone speed control systems all fines, whether prepaid or imposed by the District Court in a contested case, must be deposited into a newly established special fund, then distributed to SHA and DSP to cover the implementation and administration costs of the speed control system. Any remaining balance after covering these costs must be paid to DSP to fund its roadside police enforcement activities. However, after October 1, 2012, the remaining balance goes to TTF instead.

Other Implementation Requirements

Any agency, agent, or contractor designated by the State or local law enforcement agency must administer and process speed monitoring system citations. However, work zone speed control system citations must be processed by DSP or a contractor the department designates.

The bill authorizes local jurisdictions to use any revenues generated from school zone automated speed enforcement in excess of the amount necessary to recover implementation costs solely for public safety purposes, including pedestrian safety programs. However, if after recovering implementation costs, the balance of revenues generated exceeds 10% of the local jurisdiction's total revenues for the fiscal year, then any amount above 10% must be remitted to the Comptroller and deposited in the general fund.

Current Law: Montgomery County is the only jurisdiction authorized to issue citations to drivers for speeding based on images collected by automated speed monitoring systems. Automated speed enforcement applies to speeding violations in Montgomery County that occur either on a highway in a residential district with a maximum posted speed limit of 35 miles per hour or in an established school zone. The maximum civil penalty is \$40. Uncontested fines are paid directly to the Montgomery County Department of Finance and must be used for public safety purposes. A report from the Montgomery County Council on the effectiveness of its system is due by December 31, 2009.

Unlike a citation issued by a law enforcement officer, a violation recorded only by an automated speed enforcement system is not a moving violation and may not be considered for purposes of motor vehicle insurance coverage. However, the civil penalty may be treated as a parking violation. Thus, if the civil penalty is not paid and the violation is not contested, MVA may refuse to register or reregister the vehicle or may suspend the registration.

Any fines or penalties collected by the District Court are remitted to the Comptroller and distributed to various transportation-related funds. A recorded image of a motor vehicle produced by an automated speed monitoring system is admissible at trial without authentication.

Background: Photo-radar enforcement systems have been implemented in several states and countries. In Utah, photo-radar enforcement is limited to school zones and other areas with a speed limit of 30 miles per hour or less, when a police officer is present, and signs are posted for motorists. The radar photograph must accompany a citation. The District of Columbia has an extensive automated enforcement program for speeding and most other moving violations. While Arizona allows automated speed enforcement statewide, Illinois allows automated speed enforcement only in construction zones or on

toll roads. Oregon and Washington also authorize automated speed enforcement in highway work zones. In Colorado, this type of enforcement is allowed only in school zones, residential areas, or adjacent to municipal parks. Automated speed enforcement systems are used extensively throughout Europe and in Australia.

Some states have limited or banned automated traffic enforcement, while others have considered authorizing or expanding it. Arkansas prohibits automated enforcement unless it occurs in school zones or at rail crossings. An officer must be present to issue a citation at the time of the violation. Nevada prohibits photographic recording of traffic violations unless the equipment is in use by an officer or is installed at a law enforcement agency. In New Hampshire, a specific statutory authorization is required, otherwise automated enforcement is prohibited. New Jersey, West Virginia, and Wisconsin specifically prohibit any type of photo-radar enforcement. Most states have no provisions related to automated enforcement.

Montgomery County's automated speed enforcement system has been the subject of several lawsuits. Most recently, a lawsuit was filed in Montgomery County Circuit Court challenging the structure of payments made by Montgomery County to the contractor that implements the automated speed enforcement system. Current law prohibits a contractor's fee from being contingent on the number of citations issued. The plaintiff has alleged that, because the contractor is to receive "\$16.25 per ticket or \$18,000 per month," the contract is unlawful.

The automated speed monitoring program in Montgomery County demonstrates how speed monitoring citation revenues affect jurisdictions of different sizes. Smaller jurisdictions that have roads which are heavily trafficked may generate a significant percentage of local revenues from speed monitoring systems because of the relatively large ratio of automobiles on local roads to persons and property subject to local taxes.

State Fiscal Effect: Revenues from work zone speed control systems do not accrue until one month after the first system becomes operational, since the bill requires that only warnings be issued for at least 30 days after the first operational unit. Since the bill's effective date is October 1, 2009, the earliest that revenues begin to accrue is November 1, 2009, assuming that at least one work zone speed system becomes operational on October 1, 2009.

For work zone speed control systems only, the bill requires that revenues be paid to SHA and DSP to cover the costs of implementing and administering the work zone speed control system. SHA has not made any final determinations on how the program will be implemented, but SHA and DSP have provided a likely implementation scenario, which assumes that all penalties are paid at the \$40 maximum.

State Highway Administration Expenditures: SHA advises that it plans to deploy five mobile units at a cost of \$100,000 each at highway work zones. Thus, SHA

administration may cost about \$46,690 in fiscal 2010 and \$70,000 annually thereafter. Maintenance for the five mobile units costs \$60,000 annually beginning in fiscal 2011. In addition, highway signage is estimated to cost \$20,000 in fiscal 2010 only.

	<u>FY 2010</u>	<u>FY 2011</u>
Mobile Enforcement Units	\$500,000	\$0
Maintenance	0	60,000
Signage	20,000	0
SHA Administration	<u>46,690</u>	<u>70,000</u>
Total SHA Expenditures	\$566,690	\$130,000

Department of State Police Expenditures: DSP advises that manpower for training, field operations, court time, and image review may cost about \$1.5 million in fiscal 2010 and \$2.1 million in fiscal 2011. The bill does not state whether the distribution of funds to DSP must supplement current spending on roadside enforcement as opposed to supplanting current funds; DSP also has not determined how funds will be used. This estimate does not reflect any enhanced enforcement that may be undertaken under the bill.

Revenues from State Work Zone Citations

Revenue generated from the five mobile units, which can be used to cover the cost of implementation by SHA and DSP, is estimated to be \$11.4 million in fiscal 2010 and \$11.3 million by fiscal 2014. This estimate is based on the following information and assumptions:

- average daily traffic of 25,000 vehicles;
- each of the five mobile units is operated an average of 8 hours per day, 5 days per week, and 40 weeks per year, with full implementation assumed in fiscal 2010;
- each unit records 60 violations per hour that are confirmed after image analysis;
- 83% of citations issued result in a \$40 fine prepayment;
- of the remaining 17%, 75% are contested and 50% of those cases result in a conviction and also pay the \$40 fine; and
- the number of citations issued decreases by 10% annually due to the deterrent effect of the work zone speed control systems.

The balance of revenues above SHA and DSP implementation costs are to be distributed to DSP until October 1, 2012, at which time they are to be distributed to TTF. Thus, in fiscal 2010, under the above estimates, DSP revenues may increase by about \$10.9 million, with SHA recovering \$566,690.

Motor Vehicle Administration Flag Removal: TTF revenues increase due to additional administrative flags placed on vehicle registrations for nonpayment of fines from statewide expansion of automated speed monitoring and from work zone speed control systems. A driver has to pay \$30 to remove an administrative flag placed on a vehicle registration. Consistent with the assumptions related to implementation, TTF revenue from collection of additional administrative flag removal fees by MVA may increase by approximately \$134,700 in fiscal 2010 from work zone speed violations, not including school zone violations. This revenue estimate is based on the following assumptions:

- approximately 83% of the estimated 320,160 citations issued in fiscal 2010 are prepaid
- of the remaining 17% of citations, it is assumed that 75% are contested and 25% are not paid; and
- the current MVA collection rate of 33% for flag fees continues in fiscal 2010.

Although not reflected in this estimate, TTF expenditures may increase if MVA needs to hire additional customer agents to handle the significant increase in administrative flag removal requests (by about \$47,600 for each such agent). MVA revenues and expenditures related to administrative flag removals increase further to the extent additional jurisdictions implement school zone speed monitoring systems.

District Court: The District Court will collect fines from contested citations based on the speed monitoring and work zone systems implemented by a local law enforcement agency and all citations from State-run work zone speed control systems. For contested citations generated by work zone speed control systems only, under the above assumptions and further assuming a 50% conviction rate, the District Court may collect about \$816,400 in fiscal 2010. This estimate is already included as part of the revenues from work zone citations, and the funds are distributed as discussed above.

The District Court workload may increase significantly due to the creation of a uniform citation, additional trials, additional notifications, collection of contested fines from local jurisdictions and all fines from State-run work zone systems, and additional notification to MVA for nonpayment of fines and failure to appear for trial.

The extent to which locally implemented speed monitoring systems and State and locally implemented work zone speed control systems impact the work of the District Court will depend, however, on the extent to which local jurisdictions choose to set up these systems. Each local jurisdiction is required to pass a law or ordinance before implementing a school zone speed monitoring system. In addition, before a county can install a speed monitoring system within a municipal corporation, the county government must obtain SHA approval and give municipal corporations at least 60 days to enact an ordinance to authorize the corporation to install a speed monitoring system instead.

The District Court advises that a new civil citation data system may be needed to implement the bill. If the District Court is unable handle the new citations and workload utilizing its existing databases, it may be necessary to contract with an outside computer services vendor at a cost of up to \$2.4 million to create a new data system.

Other Revenue and Expenditure Impacts

Although a higher uncontested payment rate has been assumed in previous estimates associated with automated enforcement, the most recent information available suggests that this rate has dropped considerably. To the extent that this rate reflects only a temporary change in behavior, special fund revenues may increase from greater collection of prepaid fines. Likewise, MVA revenues may decrease from lower collection of the administrative flag removal fee. Further, the above estimates do not account for contested fines associated with local implementation of automated enforcement.

Legislative Services advises that, due to the lack of reliable data from which to estimate the number of citations that will be generated by the bill, as well as uncertainty as to how the work zone speed control systems will be implemented, the expenditure and revenue estimates may vary substantially. Notably, the number of work zone systems deployed may differ significantly, and implementation may be delayed by months or years.

General fund revenues may increase in any year in which a jurisdiction generates revenues in excess of 10% of its total budget from speed monitoring in school zones.

Local Fiscal Effect: To the extent that local governments implement school zone speed monitoring and both expenditures and revenues will increase. Although the magnitude of these increases is difficult to predict, given the experience of Montgomery County, revenue from speed cameras is expected to be significantly higher than associated expenditures.

The bill requires that only warnings may be issued during the first 30 days of automated speed enforcement. Therefore, local governments have to cover the costs of the first month of implementation. In addition to the automated speed enforcement units, this cost also includes signage in school zones.

Charles County indicates that start-up costs for a speed camera program may be about \$1 million. Frederick and Somerset counties indicate that there are no current plans to implement an automated speed enforcement system.

The bill also alters the automated speed enforcement program in Montgomery County by increasing the threshold from 10 to 12 miles per hour over the posted speed limit for which a citation may be issued and restricting the hours during which school zone

monitoring systems may be operated. Accordingly, the number of citations and associated revenues may decrease significantly.

In addition, for Montgomery County and local governments in the county currently implementing automated speed monitoring systems, as well as any jurisdictions which implement school zone speed monitoring systems under the bill, revenues in excess of implementation costs will be capped at 10% of total local revenues. Although this restriction will not affect Montgomery County, and is unlikely to affect the City of Rockville, it will likely trigger a transfer of revenues from the Village of Chevy Chase to the State's general fund. For example, if this provision were in effect in fiscal 2008, \$911,270 would have been required to be remitted to the State. Legislative Services advises that this restriction will likely affect only jurisdictions with relatively few other revenue sources.

Additional Comments: If speed cameras replace a significant number of police-issued tickets, according to the Maryland Automobile Insurance Fund, insurance carriers would have reduced information regarding the level of risk for those drivers. The level of risk is one of the factors used in setting insurance premiums.

Legislative Services advises that, although the bill authorizes revenues collected by jurisdictions from fines paid for speed monitoring citations in school zones to be used solely for public safety expenditures, the revenues may supplant existing spending, and are not required to supplement such spending as is currently required of speed monitoring revenues in Montgomery County.

Additional Information

Prior Introductions: Similar bills were introduced in the 2008 session as HB 364 and SB 269; both bills passed the House and Senate with amendments, but no further action was taken after conference committees were appointed.

Cross File: HB 313 (The Speaker, *et al.*) (By Request - Administration) - Environmental Matters.

Information Source(s): Charles, Frederick, and Somerset counties; Maryland Insurance Administration; Maryland Department of Transportation; Department of State Police; Judiciary (Administrative Office of the Courts); National Conference of State Legislatures; Department of Legislative Services

Fiscal Note History: First Reader - February 10, 2009
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Vehicle Laws – Speed Monitoring System – Statewide Authorization and Use in Highway Work Zones

BILL NUMBER: Senate Bill 277

PREPARED BY: Governor’s Legislative Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.