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Senate Bill 43 (as enacted)  
Sponsor: Senator John Cherry  
Senate Committee: Transportation and Infrastructure  
House Committee: Transportation, Mobility and Infrastructure

**PUBLIC ACT 164 of 2023**

Date Completed: 11-27-23

**RATIONALE**

According to testimony before the Senate Committee on Transportation and Infrastructure, there are three to four construction worker deaths on roadways in Michigan annually. The Michigan Transportation Asset Management Council forecasts a decline in statewide road conditions over the next decade, which increases the need for road construction projects. These projects, especially in urban areas, create greater traffic congestion and may frustrate commuters. To alleviate traffic delays during busy times, some road repair crews have begun to work at night; however, reduced visibility and higher rates of inebriated driving at this time may increase the risk of worker fatality. Some people believe that introducing more road construction safety measures will reduce the number of deaths, a goal supported by the Michigan Department of Transportation's (MDOT) Toward Zero Deaths safety campaign. Accordingly, it was suggested that MDOT be required to follow certain safety measures when closing a freeway for construction.

**CONTENT**

**The bill amended Public Act 165 of 1917, which governs the placement of suitable barriers during the closure of highways for improvement or repair, to do the following:**

- **Require MDOT to use concrete barriers or equivalent crashworthy temporary traffic barriers when closing a freeway or a portion of freeway for construction, improvement, or repair.**
- **Specify that this requirement does not apply if the freeway or portion of freeway is closed for not more than three days for an emergency repair, utility crossing, maintenance, or other short-duration operation.**
- **Allow MDOT to exercise its engineering judgement in designing and placing concrete barriers or equivalent crashworthy temporary traffic barriers and associated traffic control devices for each closure of a freeway or portion of freeway.**

The bill took effect October 19, 2023.

Under the Act, officials in charge of constructing, improving, or repairing highways may close any highway or portion of highway for those purposes. The highway or portion of highway may not be closed until suitable barriers have been erected at the ends of the closed highway or portion of highway, and at the point of intersection of the closed highway or portion of highway. The Act specifies that suitable barriers include those that conform to the Manual of Uniform Traffic Control Devices adopted under Public Act 300 of 1949. The bill deleted a provision concerning suitable barriers and subjects the other provisions to the requirements described below.

Under the bill, except as otherwise provided, if MDOT closes any freeway or portion of freeway under its jurisdiction for construction, improvement, or repair of that freeway, a portion of freeway, or a bridge located upon that freeway or portion of freeway, the following apply:

- If the freeway is closed completely to traffic, it must be closed using concrete barriers or equivalent crashworthy temporary traffic barriers; ramp access may be closed with barricades, concrete barriers, or other equivalent crashworthy temporary traffic barriers to maintain access for construction traffic and emergency services.
- If the freeway is not closed completely to traffic and a portion of the freeway is closed at any time between a half hour after sunset to a half hour before sunrise for work scheduled to be done at that time in a contract between a contractor and MDOT, concrete barriers or equivalent crashworthy temporary traffic barriers must separate any road workers who are performing work from traffic.

The bill specifies that the provisions above do not apply if the freeway or portion of freeway is closed for up to three days for an emergency repair, utility crossing, maintenance, or other short-duration operation.

The bill allows MDOT to exercise its engineering judgement in designing and placing concrete barriers or equivalent crashworthy temporary traffic barriers and associated traffic control devices for each closure of a freeway or portion of freeway to account for site-specific conditions, including roadway grade, equipment malfunctions, emergency service, law enforcement needs, crash history, or work duration. If the engineering judgement determines that the use of concrete barriers will cause additional risks for road users, additional safety measures to protect road workers must be included in the contract between the contractor and MDOT.

The bill defines "crashworthy" as that term as defined in the Michigan Manual on Uniform Traffic Control Devices: a characteristic of a roadside appurtenance that has been successfully crash tested in accordance with a national standard such as the National Cooperative Highway Research Program Report 350, "Recommended Procedures for the Safety Performance Evaluation of Highway Features." "Suitable barrier" means a barrier that conforms to the Michigan Manual on Uniform Traffic Control Devices. "Michigan Manual on Uniform Traffic Control Devices" means the Manual on Uniform Traffic Control Devices adopted under Section 608 of the Michigan Vehicle Code.

"Freeway" means that term as defined in Section 18a of the Michigan Vehicle Code: a divided arterial highway for through traffic with full control of access and with all crossroads separated in grade from pavements for through traffic. "Highway" includes roads and streets.

MCL 247.291 et al.

## **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**

The bill's safety measures, such as requiring MDOT to close a freeway for construction using concrete barrier or other crashworthy traffic barriers, protects road workers. In 2022, there were 4,393 crashes in Michigan's construction, maintenance, and utility work zones, resulting in 13 fatalities and 862 injuries.<sup>1</sup> According to MDOT, five road workers were killed and three

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<sup>1</sup> "Fast Facts", [www.michigan.gov/mdot](http://www.michigan.gov/mdot). Retrieved 5-8-2023.

injured in just three months during fall 2020.<sup>2</sup> People should not be killed just because they come to work. Additional safety measures to protect road workers should be instituted. Barriers serve a variety of protective purposes. Their presence cautions drivers entering a construction zone, marks safe driving paths, and prevents vehicles from entering work zones. Crashworthy barriers can resist the force of a low-speed collision, slowing a vehicle and potentially allowing an individual to move out of its path before being hit.<sup>3</sup> Requiring MDOT to use crashworthy barriers will help protect road workers from injury and death.

### **Opposing Argument**

The bill's safety measures may create an unnecessary cost for the State, as MDOT could already do what the bill proposed. Prior law prohibited highway authorities from closing any highway or portion of a highway unless suitable barriers were erected at the ends of the highway or closed portion of the highway, as well as at any intersection with another highway. If MDOT considered more barriers necessary, nothing prohibited it from erecting them. Forcing these barrier requirements into law when MDOT could already implement them may be superfluous and costly.

**Response:** Though requiring that MDOT place these barriers may incur additional costs, the State has a responsibility to protect its citizens and workers. It should not be deterred by the cost of additional safety measures. Additionally, statutorily requiring MDOT to comply with specific safety measures will ensure continuity between administrations.

### **Opposing Argument**

The bill should have gone farther to institute protective barriers during the day. While workers may experience more dangerous conditions at night due to lower visibility and higher rates of inebriated driving, they also face a chance of death and injury during the day due to heavy traffic. Workers deserve to be protected always, not just at night.

**Response:** Requiring barriers to be built throughout the day would have been expensive and could present logistical concerns. Nighttime construction work may differ from daytime construction work. For example, workers who work on one part of a highway during the day may transition to another part of the highway at night to take advantage of better traffic conditions. Barriers would have to be moved with them or built around the entire construction zone, which could prove unsustainable.

Legislative Analyst: Abby Schneider

## **FISCAL IMPACT**

The bill will have an indeterminate fiscal impact on the State and no fiscal impact on local governments. The bill may result in increased costs to the State if the costs of the barrier materials are more expensive, or the barriers themselves are more expensive to install and uninstall, than previous materials used; however, the bill may result in a decreased cost to the State if fewer accidents and worker injuries or deaths occur.

Fiscal Analyst: Bobby Canell

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<sup>2</sup> Serrano, Maria, "Michigan State Police investigating construction worker death, legal experts weigh in," *News Channel 3*, August 28, 2021.

<sup>3</sup> "The importance of barricades in construction", [www.trafficsafetyzone.com](http://www.trafficsafetyzone.com). Retrieved 5-8-2023.

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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.