

BILL ANALYSIS

C.S.H.B. 901
By: King
Transportation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, Texas law has no provision that speaks to the installation of photographic traffic control systems. CSHB 901 authorizes a municipality to implement such a system and to issue civil citations for violations recorded by the system. Failure to pay will not result in issuance of a warrant for an arrest, but will be retained on the court's docket as a civil matter. However, when multiple (three or more) delinquent violations occur, the vehicle may be impounded or immobilized. Failure to pay will also not affect the owner's insurance or driving record.

CSHB 901 specifically amends the Transportation Code to authorize a municipality to implement a system designed to photograph the rear license plate of a vehicle that violates the instructions of a traffic signal. The recordings will consist of two pictures: the first photograph taken displays the license plate number of the vehicle and the second displays the alleged traffic violation. Only a picture of the license plate itself will be sent to the owner. Photo enforcement helps communities enforce traffic laws by automatically photographing vehicles whose drivers deliberately run red lights. Nationally, red light cameras are in use in more than 70 U.S. communities.

Texas has the fourth highest number of red light running fatalities per capita in the country. One in three Texans claim they personally know someone who has been injured or killed in a red light running crash. Photo enforcement programs have documented success in reducing the incidences of red light running in cities where the systems have been installed.

Texas currently utilizes a significant surveillance operations system to monitor traffic. For example, TxDOT uses cameras on IH 35 and at other locations on the state highway system to monitor traffic as part of the Intelligent Transportation System (ITS) Program. ITS uses advanced technology to monitor and respond to roadway conditions. These cameras allow TxDOT and other jurisdictions to pinpoint trouble on the highway such as a disabled vehicle or collision that may be disrupting traffic flow. This system also allows TxDOT and local jurisdictions to respond to incidents with a rapid dispatch of emergency services and personnel for collisions involving injuries and restores normal traffic flow as quickly as possible.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

- CSHB 901 authorizes the governing body of a municipality that implements a photographic traffic enforcement system to impose a civil penalty on the owner of the vehicle. (Section 707.002)
- A municipality may contract for the administration and enforcement of the system and install and operate the system or contract for these services. A municipality that contracts for the administration and enforcement of the system may not agree to pay the contractor a specified percentage or, or dollar amount from, each civil penalty collected. The system is subject to regular

and periodic inspections and should be calibrated when necessary. A municipality may choose an approach based on traffic volume, the history of accidents at the approach, the number or frequency of red light violations at the approach, and similar traffic engineering and safety criteria. Ethnic and socioeconomic characteristics cannot be used as criteria for selecting of the area in which an approach is located. (Section 707.003)

- A municipality's ordinance adopted in accordance with this bill must provide for a hearing, a hearing officer, and a designated party within the entity responsible for the enforcement and administration of the ordinance. An entity providing for the enforcement and administration of the system may also be designated by the municipality for the enforcement and administration of the ordinance. (Section 707.004)
- The implementation of a system does not preclude other enforcement including citation and notice to appear by a peace officer. A civil penalty may not be issued if the vehicle operator is arrested or is issued a citation and notice to appear by a peace officer for the same violation. (Section 707.005)
- A notice of violation shall be mailed to the owner of the vehicle not later than the 30th day after the date of the alleged violation. This notice must include a description of the violation, location of the intersection of the violation, date and time of the violation, name and address of the vehicle owner, registration number on the license plate of the vehicle, a copy of a recorded image limited solely to the depiction of the area of the registration number displayed on the license plate of the vehicle, the amount of the civil penalty, the time period in which to pay the civil penalty or contest the violation and notice of a late payment penalty, and information that informs the vehicle owner that the civil penalty may be paid or contested instead of appearing at the time and place of the administrative hearing. (Section 707.006)
- Failure to pay the civil penalty or contest liability in a timely manner is an admission of liability and waives the owner's right to appeal the civil penalty. (Section 707.007)
- The owner of the vehicle is presumed to have committed the violation alleged to have occurred. A person in the business of renting, selling, or leasing motor vehicles may rebut the presumption by establishing evidence that the vehicle was being rented, sold, or leased to another person at the time of alleged violation. The presentation of evidence must be made by affidavit, through testimony at the administrative hearing, or by a written declaration under penalty of perjury. This evidence must include the name of the individual who rented or leased the vehicle when the violation occurred, the individual's mailing address, and the time period when the vehicle was rented or leased. (Section 707.008)
- A person may contest an alleged violation by filing a written request for an administrative adjudication hearing. The burden of proof in the administrative adjudication hearing is preponderance of the evidence. (Section 707.009)
- An untimely request for an administrative adjudication hearing can be overcome by submitting a written request for a hearing to the designated hearing officer along with an affidavit attesting to the date on which the notice of violation was received. (Section 707.010)
- A civil penalty may not exceed \$75. If the same owner of a vehicle receives a third or subsequent violation in a twelve-month period then the civil penalty may not exceed \$200. A late penalty fee not to exceed \$50 may be assessed for penalties not timely paid. (Section 707.011)
- Three or more delinquent civil penalties may result in impoundment or immobilization of the vehicle. (Section 707.012)
- An owner of a motor vehicle may contest finding of liability by filing an appeal petition. (Section

707.013)

- A civil penalty is not a conviction and may not be considered a conviction for any purpose. (Section 707.014)
- A municipality shall place signs to inform motorists that a photographic traffic signal enforcement system is in use in the municipality. The signs shall be placed at each location where a city limits sign has been erected. (Section 707.015)
- A person commits a Class A misdemeanor if the system is used for anything other than its intended purposes. (Section 707.016)
- A municipality may retain revenue in the amounts necessary for the purchasing or leasing of equipment, installation, operation, and maintenance of the system. In addition, a municipality may retain up to \$10,000 for public awareness and education programs regarding the municipality's use of the system. Other revenue shall be remitted to the comptroller for deposit in the Texas Mobility Fund. The municipality shall provide the comptroller with a report detailing the total amount of civil penalties and late penalties quarterly to ensure accountability within the system. (Section 707.017)
- A municipality must dispose of the recorded image within 30 days following a finding of no liability for the violation or payment of the civil penalty. (Section 707.018)
- The recorded image from a photographic traffic signal enforcement system is a law enforcement record and not subject to public disclosure, except upon request by the owner of the vehicle depicted in the recorded image. (Section 552.108, Government Code)
- A municipal court, including a municipal court of record, has exclusive appellate jurisdiction within the municipality's territorial limits in matters arising under Chapter 707 of the Transportation Code. (Section 29.003, Government Code)

EFFECTIVE DATE

This Act takes effect September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute differs from the original bill in the following ways:

The enforcement system must be subject to regular and periodic inspections to ensure the system is operating properly and is calibrated when necessary. A municipality may choose an approach based on traffic volume, the history of accidents at the approach, the number or frequency of red light violations at the approach, and similar traffic engineering and safety criteria. Ethnic and socioeconomic characteristics cannot be used as criteria for selecting of the area in which an approach is located. (Section 707.003)

Clarifies that only a recorded image of the license plate of the vehicle may be included in the Notice of Violation that is mailed to the registered owner of the vehicle. (Section 707.006)

The municipalities must give the Comptroller all designated revenue to the Texas Mobility Fund on a quarterly basis instead of on an annual basis. (Section 707.017)

Clarifies the Notice of Violation must include information setting forth the number of days that the recipient must either pay the civil penalty or contest the violation, rather than the current language that only requires information regarding the number of days in which the person must pay the penalty. (Section 707.006)

Clarifies that the owner of a rental or lease vehicle is responsible for the traffic violation, but is entitled to a rebuttable presumption. Most rental or lease contracts specify that the driver is responsible for traffic violations while either renting or leasing the vehicle. This change closes the loophole for those rental or lease contracts that are silent on the responsibility of traffic violations. The contractors may rebut the presumption that the person set forth as the owner of the motor vehicle committed the violation by providing one of three forms of evidence: 1) affidavit under oath; 2) evidence at the administrative hearing; or 3) an unsworn written declaration under penalty of perjury. Evidence at the administrative hearing must include the name of the individual who rented or leased the vehicle when the violation occurred, the individual's mailing address, and the time period when the vehicle was rented or leased. This evidence will provide the municipality the appropriate information to forward the driver a copy of the photograph and Notice of Violation. (Section 707.008)

Changes the deadline by which persons must file a request for an administrative hearing from 15 days after it is mailed to 30 days after it is mailed, in order to accommodate time concerns from out-of-state rental car companies. (Section 707.009)

Clarifies that the affidavit of the officer or employee of the municipality is admissible in both the administrative hearing and the appeals process. (Section 707.009)

Provides that a municipality must dispose of all recorded images of the violation within 30 days following a finding of no violation or payment of the penalty. (Section 707.018)

Amends the Public Information Act to provide that a recorded image from a photographic traffic signal enforcement system is a law enforcement record and not subject to public disclosure, except upon request by the owner of the vehicle depicted in the recorded image. (Section 552.1085, Government Code)

Conforming amendment that clarifies that a municipal court has appellate jurisdiction over appeals from administrative hearings (to conform to Section 707.013(a)).