

SENATE SUBSTITUTE TO HB 77

AS PASSED SENATE

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and
 2 traffic, so as to require a permit from the Department of Transportation for the use of a
 3 traffic-control signal monitoring device; to provide for review of permits by the department;
 4 to provide for use of a certified peace officer to swear to a traffic light violation; to provide
 5 a definition; to provide for an engineering study; to provide for changing timing of the
 6 intersection clearance interval; to provide for reports to the Department of Transportation;
 7 to provide for disposition of funds collected through use of traffic-control signal monitoring
 8 devices; to provide for an administrative review of denied, suspended, or revoked permits;
 9 to provide for related matters; to provide for an effective date; to repeal conflicting laws; and
 10 for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

12 Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is
 13 amended by revising paragraph (3) of subsection (f) of Code Section 40-6-20, relating to
 14 enforcement by traffic-control signal monitoring devices, as follows:
 15

16 "(3) For the purpose of enforcement pursuant to this subsection:

17 (A) The driver of a motor vehicle shall be liable for a civil monetary penalty of not
 18 more than \$70.00 if such vehicle is found, as evidenced by recorded images produced
 19 by a traffic-control signal monitoring device, to have been operated in disregard or
 20 disobedience of a CIRCULAR RED or RED ARROW signal in violation of subsection
 21 (a) of this Code section and such disregard or disobedience was not otherwise
 22 authorized by law;

23 (B) The law enforcement agency authorized to enforce the provisions of this Code
 24 section ~~for which such device is permitted~~ shall send by ~~first-class~~ regular mail
 25 addressed to the owner of the motor vehicle postmarked not later than ten days after the
 26 date of the alleged violation:

1 (i) A citation for the alleged violation, which shall include the date and time of the
 2 violation, the location of the intersection, the amount of the civil monetary penalty
 3 imposed, and the date by which the civil monetary penalty shall be paid;

4 (ii) A copy of the recorded image;

5 (iii) A copy of a certificate sworn to or affirmed by a ~~trained law enforcement~~
 6 certified peace officer ~~or a technician~~ employed by a law enforcement agency for
 7 ~~which such device is authorized~~ to enforce this Code section and stating that, based
 8 upon inspection of recorded images, the owner's motor vehicle was operated in
 9 disregard or disobedience of a CIRCULAR RED or RED ARROW signal in violation
 10 of subsection (a) of this Code section and that such disregard or disobedience was not
 11 otherwise authorized by law;

12 (iv) A statement of the inference provided by subparagraph (D) of this paragraph and
 13 of the means specified therein by which such inference may be rebutted;

14 (v) Information advising the owner of the motor vehicle of the manner and time in
 15 which liability as alleged in the citation may be contested in court; and

16 (vi) Warning that failure to pay the civil monetary penalty or to contest liability in a
 17 timely manner shall waive any right to contest liability and result in a civil monetary
 18 penalty;

19 provided, however, that only warning notices and not citations for violations shall be
 20 sent during the 30 day period commencing with the installation of a traffic-control
 21 signal monitoring device at such location;

22 (C) Proof that a motor vehicle was operated in disregard or disobedience of a
 23 CIRCULAR RED or RED ARROW signal in violation of subsection (a) of this Code
 24 section shall be evidenced by recorded images produced by a traffic-control signal
 25 monitoring device authorized pursuant to Article 3 of Chapter 14 of this title. A copy
 26 of a certificate sworn to or affirmed by a ~~trained law enforcement~~ certified peace officer
 27 ~~or a technician~~ employed by a law enforcement agency for ~~which such device is~~
 28 ~~authorized~~ and stating that, based upon inspection of recorded images, a motor vehicle
 29 was operated in disregard or disobedience of a CIRCULAR RED or RED ARROW
 30 signal in violation of subsection (a) of this Code section and that such disregard or
 31 disobedience was not otherwise authorized by law shall be prima-facie evidence of the
 32 facts contained therein; and

33 (D) Liability under this subsection shall be determined based upon preponderance of
 34 the evidence. Prima-facie evidence that the vehicle described in the citation issued
 35 pursuant to this subsection was operated in violation of subsection (a) of this Code
 36 section, together with proof that the defendant was at the time of such violation the
 37 registered owner of the vehicle, shall permit the trier of fact in its discretion to infer that

1 such owner of the vehicle was the driver of the vehicle at the time of the alleged
2 violation. Such an inference may be rebutted if the owner of the vehicle:

3 (i) Testifies under oath in open court or submits to the court a sworn notarized
4 statement that he or she was not the operator of the vehicle at the time of the alleged
5 violation;

6 (ii) Presents to the court a certified copy of a police report showing that the vehicle
7 had been reported to the police as stolen prior to the time of the alleged violation; or

8 (iii) Submits to the court a sworn notarized statement identifying the name of the
9 operator of the vehicle at the time of the alleged violation."

10 SECTION 1.1.

11 Said title is further amended by revising paragraph (5) of subsection (f) of Code Section
12 40-6-20, relating to enforcement by traffic-control signal monitoring devices, as follows:

13 "(5) If a person summoned by ~~first-class~~ regular mail fails to appear on the date of return
14 set out in the citation and has not paid the penalty for the violation or filed a police report
15 or affidavit notarized statement pursuant to ~~division (3)(D)(ii) or (3)(D)(iii)~~ subparagraph
16 (D) of paragraph (3) of this subsection, the person shall then be summoned a second time
17 by certified mail with a return receipt requested. The second summons shall include all
18 information required in subparagraph (B) of paragraph (3) of this subsection for the initial
19 summons and shall include a new date of return. If a person summoned by certified mail
20 again fails to appear on the date of return set out in the second citation and has failed to
21 pay the penalty or file an appropriate document for rebuttal, the person summoned shall
22 have waived the right to contest the violation and shall be liable for a civil monetary
23 penalty of not more than \$70.00."

24 SECTION 2.

25 Said title is further amended by revising paragraph (8) of subsection (f) of Code Section
26 40-6-20, relating to enforcement by traffic-control signal monitoring devices, as follows:

27 "~~(8) The provisions of this subsection shall not limit law enforcement agencies to the use~~
28 ~~of traffic-control signal monitoring devices in enforcing subsection (a) of this Code~~
29 ~~section; and, when there is evidence obtained from another source or sources which~~
30 ~~constitutes a prima-facie case of a violation of subsection (a) of this Code section, such~~
31 ~~violation may be prosecuted as otherwise provided by law in lieu of, but not in addition~~
32 ~~to, enforcement under this subsection. A governing authority shall not impose a civil~~
33 penalty under this subsection on the owner of a motor vehicle if the operator of the
34 vehicle was arrested or issued a citation and notice to appear by a peace officer for the
35 same violation that is recorded by a traffic-control signal monitoring device."

SECTION 3.

Said title is further amended by revising Code Section 40-14-20, relating to definitions for the use of traffic-control signal monitoring devices, by redesignating paragraphs (1) and (2) as paragraphs (2) and (3) and adding a new paragraph (1) as follows:

"(1) 'Governing authority' means any county, municipality, or consolidated government."

SECTION 4.

Said title is further amended by revising Code Section 40-14-21, relating to the use of traffic-control signal monitoring devices, as follows:

"40-14-21.

(a) A governing authority must obtain an operating permit from the Department of Transportation prior to using any traffic-control signal monitoring device. The law enforcement agency of any county or municipality governing authority shall not use traffic-control signal monitoring devices unless the chief law enforcement officer of such county or municipality governing authority desires the use of such devices and such use is approved by a properly adopted resolution of the governing authority.

(b) The governing authority ~~of the county or municipality~~ shall also conduct a public hearing on the proposed use of such devices prior to entering any contract on or after July 1, 2001, for the use or purchase of such devices.

(c) The Department of Transportation is authorized to prescribe by appropriate rules and regulations the manner and procedure in which applications shall be made for traffic-control signal monitoring device permits and to prescribe the required information to be submitted by an applicant consistent with the requirements of this title. The Department of Transportation may deny an application or suspend or revoke a permit for failure of the governing authority to provide requested information or documentation or for any other violation of this article or violation of the rules and regulations of the department.

(d) An application for the operation of a traffic-control signal monitoring device by a governing authority shall name the intersection at which the device is to be used and provide demonstrable evidence that there is a genuine safety need for the use of such device at the designated intersection. The documented safety need for each designated intersection shall be approved by the Department of Transportation in accordance with nationally recognized safety standards. For each designated intersection, the governing authority shall conduct a traffic engineering study to determine whether, in addition to or as an alternative to the traffic-control signal monitoring device, there are other possible design or operational changes likely to reduce the number of accidents or red light violations at that intersection. This report shall be submitted with the application for an

1 operation permit required under these provisions and any request to amend the operation
 2 permit to include an additional intersection.

3 (e) The revenue generated by the use of a traffic-control signal monitoring device shall not
 4 be considered when determining whether to issue a permit for the operation of such devices
 5 at a designated intersection. The only consideration shall be the increased life-saving
 6 safety value by the use of such a device at the designated intersection.

7 (f) Permits shall be issued by the Department of Transportation within three months of
 8 receiving a completed permit application from a governing authority where such governing
 9 authority is otherwise in compliance with the provisions of this article. An application for
 10 amendment to an existing permit and an application for a renewal permit following a
 11 suspension or revocation of a permit shall also be processed within three months of receipt
 12 of such application, provided that the application is complete and complies with the
 13 provisions of this article. A permit shall authorize use of a traffic-control signal monitoring
 14 device for only those designated intersections approved as having a documented
 15 life-saving safety need by the Department of Transportation.

16 (g) No county or municipal governing authority shall be authorized to use traffic-control
 17 signal monitoring devices where any arresting officer or official of the court having
 18 jurisdiction of traffic cases is paid on a fee system. This subsection shall not apply to any
 19 official receiving a recording fee.

20 ~~(c)~~(h) If a ~~county or municipality~~ governing authority elects to use traffic-control signal
 21 monitoring devices, no portion of any civil monetary penalty collected through the use
 22 of such devices may be paid to the manufacturer or vendor of the traffic-control signal
 23 monitoring devices. The compensation paid by the ~~county or municipality~~ governing
 24 authority for such devices shall be based on the value of such equipment and shall not be
 25 based on the number of citations issued or the revenue generated by such devices.

26 ~~(d)(1)~~(i) ~~A~~ Charges for violations based on evidence obtained from a traffic-control signal
 27 monitoring device shall not be ~~used~~ made by a law enforcement agency unless the law
 28 enforcement agency employs at least one full-time certified peace officer.

29 ~~(2) Failure of a law enforcement agency to continue to meet the standards provided by~~
 30 ~~this subsection shall cause such agency to be ineligible to use traffic-control signal~~
 31 ~~monitoring devices.~~

32 ~~(e)~~(j) A traffic-control signal monitoring device shall not be used to produce any
 33 photograph, microphotograph, electronic image, or videotape showing the identity of any
 34 person in a motor vehicle.

35 (k) A governing authority utilizing traffic-control signal monitoring devices shall at all
 36 times cooperate fully with the Department of Transportation. The department is
 37 authorized, at any time, to inspect traffic-control signal monitoring devices used by a

1 governing authority and any records pertaining to revenues collected from the use of such
 2 devices.

3 (l) A permit may be amended at any time by amended application submitted by a
 4 governing authority. The request to amend an application and to add a new intersection to
 5 the list of authorized intersections for the operation of a traffic-control signal monitoring
 6 device shall be considered by the department in the same manner as original permit
 7 applications.

8 (m) A permit shall be reviewed by the Department of Transportation once every three
 9 years from the date of issuance or date of the most recent extension unless the permit has
 10 been revoked or suspended by the department. The review shall be conducted in the same
 11 manner as the original permit application.

12 (n) The department is authorized to set reasonable application fees to compensate the
 13 department for necessary costs in issuing, amending, or reviewing a permit to operate
 14 traffic-control signal monitoring devices.

15 (o) Any governing authority operating a traffic-control signal monitoring device on
 16 December 31, 2008, shall have until January 1, 2010, to obtain a permit for the operation
 17 of such device as required by this Code section."

18 **SECTION 5.**

19 Said title is further amended by revising Code Section 40-14-22, relating to timing of
 20 traffic-control signals, as follows:

21 "40-14-22.

22 The timing of any traffic-control signal which is being monitored by a traffic-control signal
 23 monitoring device shall conform to regulations promulgated by the Department of
 24 Transportation pursuant to Code Section 32-6-50. The duration of the yellow or red light
 25 of any traffic-control device at which a traffic-control signal monitoring device is installed
 26 shall not be decreased prior to the installation of a device or during the time for which the
 27 device is operated. The Department of Transportation shall establish minimal yellow light
 28 change interval times for traffic-control devices at intersections where a traffic-control
 29 signal monitoring device is utilized. The minimal yellow light change interval time shall
 30 be established in accordance with nationally recognized engineering standards, and any
 31 such established time shall not be less than the recognized national standard plus one
 32 additional second. Each ~~county or municipal law enforcement agency~~ governing authority
 33 using a traffic-control signal monitoring device shall at its own expense test the device for
 34 accuracy at regular intervals and record and maintain the results of each test. Such test
 35 results shall be public records subject to inspection as provided by Article 4 of Chapter 18
 36 of Title 50. Each such test shall be made in accordance with the manufacturer's

1 recommended procedure. Any such device not meeting the manufacturer's minimum
 2 accuracy requirements shall be removed from service and thereafter shall not be used by
 3 the ~~county or municipal~~ governing authority, nor shall any charges for violations based on
 4 evidence from such device be made by a law enforcement agency, until it such device has
 5 been serviced and calibrated at the expense of the ~~law enforcement agency~~ governing
 6 authority by a qualified technician."

7 SECTION 6.

8 Said title is further amended by revising Code Section 40-14-23, relating to signs to notify
 9 motorists of use of traffic-control signal monitoring devices, as follows:

10 "40-14-23.

11 Each ~~county or municipality~~ governing authority using traffic-control signal monitoring
 12 devices shall erect signs on every highway which comprises a part of the state highway
 13 system at that point on the highway which intersects the jurisdictional limits of the ~~county~~
 14 ~~or municipality~~ governing authority. A sign shall be erected also by such entity on each
 15 public road on the approach to the next traffic-control signal for such road when a
 16 traffic-control signal monitoring device is monitoring such next signal for such road and
 17 signs shall also be erected at any other location required by the Department of
 18 Transportation. Such signs shall be ~~at least 30 inches by 30 inches in measurement and~~
 19 ~~shall warn approaching motorists that traffic-control signal monitoring devices are being~~
 20 ~~employed~~ of a design specified by the Department of Transportation in accordance with
 21 nationally recognized standards."

22 SECTION 7.

23 Said title is further amended by revising Code Section 40-14-24, relating to reports regarding
 24 use of traffic-control signal monitoring devices, as follows:

25 "40-14-24.

26 (a) Each ~~county or municipality~~ governing authority using any traffic-control signal
 27 monitoring device shall submit not later than February 1 of each year a report on such use
 28 during the preceding calendar year to the ~~Governor, the Lieutenant Governor, and the~~
 29 ~~Speaker of the House of Representatives~~ Department of Transportation. Such report shall
 30 include, without limitation:

- 31 (1) A description of the locations where traffic-control signal monitoring devices were
 32 used;
- 33 (2) The number of violations recorded at each location and in the aggregate on a monthly
 34 basis;
- 35 (3) The total number of citations issued;

1 (4) The number of civil monetary penalties and total amount of such penalties paid after
2 citation without contest;

3 (5) The number of violations adjudicated and results of such adjudications, including a
4 breakdown of dispositions made;

5 (6) The total amount of civil monetary penalties paid; and

6 (7) The quality of the adjudication process and its results.

7 (b) If any governing authority fails to provide the report provided for in subsection (a) of
8 this Code section all revenues generated from the operation of any traffic-control signal
9 monitoring device from the date the report was due shall be forwarded to the general fund
10 of the state. The governing authority shall not be entitled to retain any revenue until the
11 annual report is filed and accepted by the Department of Transportation.

12 (c) The Department of Transportation shall forward copies of all reports to the offices of
13 the Governor, Lieutenant Governor, and the Speaker of the House by March 1 of each year.
14 The department shall also forward to the offices of the Governor, Lieutenant Governor, and
15 the Speaker of the House a complete list of all traffic-control signal monitoring devices
16 currently in use."

17 SECTION 8.

18 Said title is further amended by adding at the end of Article 3 of Chapter 14, relating to
19 traffic-control signal monitoring devices, new Code sections to read as follows:

20 "40-14-25.

21 (a) Complaints surrounding the use and operation of traffic-control signal monitoring
22 devices by governing authorities, including the use by a governing authority for any
23 purpose other than the promotion of the public health, welfare, and safety or in a manner
24 which violates this article or violates its operating permit, may be made to the
25 commissioner of transportation. The commissioner or the commissioner's designee is
26 authorized to conduct an investigation into the acts and practices of the governing authority
27 with respect to the use of traffic-control signal monitoring devices. If, as a result of this
28 investigation, there is evidence to substantiate a violation of this article or the rules and
29 regulations of the Department of Transportation, the department may take any action
30 deemed necessary to prevent further misconduct or violations, including denying an
31 application for a permit or suspension or revocation of a permit.

32 (b) There shall be a rebuttable presumption that a governing authority is using
33 traffic-control signal monitoring devices for purposes other than the promotion of the
34 public health, welfare, and safety if such devices are used by a governing authority without
35 a valid permit issued by the Department of Transportation or in violation of any
36 requirement of this article or the rules and regulations of the department.

1 (c) Where a violation of this article by a governing authority or any law enforcement
2 agency enforcing the use of traffic-control signal monitoring devices on behalf of such
3 governing authority is substantiated, the Department of Transportation may order that
4 revenues generated from the use of traffic-control signal monitoring devices during the
5 time of such violation or misconduct shall be remitted to the state's general fund. The
6 department's order to remit funds shall be a continuous order until the violation is corrected
7 by the governing authority as determined by the department. Any governing authority
8 failing to abide by such order shall be liable for interest and costs, including reasonable
9 attorneys fees, incurred in the enforcement of the order. Jurisdiction for enforcing the
10 department's order shall be in the Superior Court of Fulton County.

11 40-14-26.

12 (a) Upon issuance by the commissioner of transportation of an order denying an application
13 for or suspending or revoking a traffic-control signal monitoring device permit, the
14 governing authority affected shall be afforded a hearing, to be held within 30 days of the
15 effective date of the order. The hearing shall be held before the commissioner of the
16 department or his or her designee, and, within 30 days following the hearing, the governing
17 authority affected shall be served with a written decision announcing whether the permit
18 shall remain denied, suspended, or revoked or whether it shall be granted or reinstated.

19 (b) Only after the expiration of three years following the revocation of a traffic-control
20 signal monitoring device permit, shall the governing authority make application, upon a
21 change of circumstances being shown, to the commissioner of transportation for a
22 reconsideration of whether the governing authority should be permitted to use
23 traffic-control signal monitoring devices."

24 **SECTION 9.**

25 This Act shall become effective December 31, 2008.

26 **SECTION 10.**

27 All laws and parts of laws in conflict with this Act are repealed.