SUBJECT: Authorizing cities to use photographic traffic-signal enforcement

COMMITTEE: Transportation — committee substitute recommended

VOTE: 6 ayes — Krusee, Phillips, Hamric, Garza, Harper-Brown, Hill

2 nays — Laney, Mercer

1 absent — Edwards

WITNESSES: For — Jackie D. Feagin and Charles M. Hinton, Jr., City of Garland; Bill Hiney, City of Plano; Bob Nusser and Larry Zacharias, City of Richardson; Walter Ragsdale, City of Richardson and Texas Institute of Transportation Engineers; Jonathan D. Shaw; Joe Southern

Against — Ann del Llano, American Civil Liberties Union of Texas; Paul Kubosh and Gerald Patrick Monks, Municipal Justice Bar Association of Texas; Terry E. Stork

On — N. John Beck, Clean Air Partners; Carlos Lopez, Texas Department of Transportation

BACKGROUND: Transportation Code, sec. 544.007(d) makes running a red light a misdemeanor punishable by a fine of up to $200.

According to a 2002 attorney general's opinion (JC-0460), cities may not adopt ordinances making disregard of traffic-control signals a civil violation, because such disregard is a criminal violation under state law, and cities may not enact ordinances that conflict with state law.

DIGEST: CSHB 901 would authorize municipalities by ordinance to implement photographic traffic-signal enforcement systems capable of producing at least two recorded images — photographic or digital — of the rear of a vehicle, including its license plate. Municipal ordinances could make owners liable for civil penalties if their vehicles violated traffic-control signals while facing only steady red lights.

The systems would have to include cameras and vehicle sensors working in conjunction with electrically operated traffic-control systems. If a vehicle violated a traffic signal, its owner would be liable for a civil penalty of up to $75. An owner could have to pay up to $200 for third or subsequent violations during any 12-month period. Late-payment penalties could not exceed $50. Vehicles involved in violations could be immobilized or impounded if their owners were delinquent in paying three or more penalties.

Ordinances implementing the systems would have to provide for hearings for alleged violators and would have to include time periods within which the hearing would have to be held and appointment of hearing officers who could administer oaths and compel witnesses and documents. They also would have to designate the municipal officials or other entities (such as system contractors) responsible for enforcing and administering the ordinances. Implementing such systems would not preclude other enforcement of traffic-signal laws, but a city could not impose a civil penalty based on photographic evidence on a vehicle owner already cited or arrested for the same violation.

Municipalities could contract for the installation, operation, administration, and enforcement of systems. Administration and enforcement contracts could include periodic or other fees but not specific percentages of or dollar amounts from civil penalty collections. A municipality would have to erect a sign conforming to Texas Transportation Commission standards where each city-limit sign was located, informing entering motorists that a photographic enforcement system was in place.

Municipalities would have to conduct traffic engineering studies before installing systems at the approaches to intersections to determine whether design or signalization changes would reduce the number of red-light violations. The changes could be in addition to or as an alternative to the photographic enforcement system.

Approaches would have to be selected for system installation based on traffic volume, accident history, number and frequency of red-light violations, and similar traffic engineering and safety criteria, without regard for the area's ethnic or socioeconomic characteristics. The system operator would have to ensure regular and periodic inspections; keep equipment in proper working condition and calibration, if applicable; and correct malfunctions as soon as

practicable. Operators would have to maintain inspection and malfunction records.

Municipalities would have to mail notices to vehicle owners against whom civil penalties were sought within 30 days of the alleged violations. Notices would have to be mailed to owners' addresses shown on their state vehicle registration records and would be presumed to have been received five days after mailing. Notices would have to contain:

- a description of the violation, including the date, time, and location of the intersection where it occurred;
- the name and address of the owner of the vehicle involved;
- a copy of the image recorded during the violation, limited solely to the registration number depicted on the license plate;
- the amount of the civil penalty for which the owner was liable;
- the amount of time the owner had either to pay or contest the penalty;
- a statement of the late penalty incurred for failing to meet that deadline;
- a statement that the owner could pay by mail instead of appearing in person;
- information about owners' rights to contest civil penalties in administrative hearings, which could be requested in writing before the deadline;
- a warning that failure to timely pay the penalty or contest liability would be an admission of liability and a waiver of the right to appeal the penalty; and
- an explanation of the rebuttable presumption for vehicle sales, leasing, and rental companies and the provisions by which it could be invoked.

Failure to timely pay or contest penalties or to appear at hearings would be considered an admission of liability for the full amount of the penalties and a waiver of the right of appeal. Imposition of a civil penalty would not be a conviction, nor could it be considered such for any purpose.

Recorded images obtained, produced, or held by municipalities or their agents or contractors during the operation of photographic enforcement systems would not be subject to the Open Records Act. The only exception would be requests by the owners of vehicles depicted in recorded images of specific

violations. Cities would have to dispose of each recorded image of violations taken by photographic enforcement systems within 30 days of payment of civil penalties and any late penalties or a finding of no liability.

It would be a Class A misdemeanor (punishable by up to one year in jail and/or a maximum fine of $4,000) to use a recorded image, or to use the photographic enforcement system to produce a recorded image, in a manner or for a purpose other than specified in the bill.

Owners of vehicles photographed in violation of traffic signals would be presumed to have committed the violations. People involved in selling, renting, or leasing vehicles could rebut the presumption by showing — through affidavits, hearing testimony, or written declaration under penalty of perjury — that another person owned or was test-driving, renting, or leasing the vehicle at the time of the violation. No penalty could be imposed on an owner if the presumption were rebutted. Within 30 days of receipt of a violation notice, an owner would have to provide the municipality or responsible entity with the names and addresses of renters and lessors and the time periods during which they had rented or leased the vehicles. Based on this information, renters and lessors would be presumed to have committed the violations and could be sent notices to that effect.

Recipients of violation notices could contest penalties by requesting in writing an administrative hearing. Recipients would have to have at least 30 days from the date the notice was mailed to submit written requests. Municipalities would have to notify them of hearing dates and times and would have to designate hearing officers. The standard of proof would be a preponderance of the evidence. Officers or employees of municipalities or responsible contractors could attest to the reliability of the photographic enforcement system by affidavits, which also would be admissible on appeal and evidence of the facts they contained.

Hearing officers would have to issue signed and dated written findings. If liability were found, findings would have to specify the penalty amount; no penalty could be imposed against a person not found liable. Findings would have to be filed with municipal clerks, secretaries, or other designees and recorded appropriately. A recipient of a notice of violation who failed to timely pay a penalty or request a hearing could seek a hearing by submitting,

within 30 days of receipt of the notice, a written request to the hearing officer accompanied by an affidavit attesting to the date of receipt.

Findings of liability could be appealed to municipal courts within 31 days of the finding. Court clerks would have to schedule hearings and notify owners and the appropriate municipal officials. Civil penalties still would be enforced pending appeal, unless the owner posted bond. Appeals would be conducted as trials *de novo*. The bill would amend Government Code, sec. 29.003, to give municipal courts exclusive appellate jurisdiction within municipal territorial limits for cases arising under CSHB 901.

Municipalities could retain civil penalty and late-payment revenue equal to the costs of buying, leasing, and installing the equipment; labor costs; system operation and maintenance costs (including notice delivery, violations review, and hearings and appeals); and up to $10,000 for a public awareness and education program about the system during its first year of operation. The remaining civil penalty and half of the late-payment revenue would have to be remitted quarterly to the comptroller and credited to the Texas Mobility Fund. Municipalities would have to file quarterly reports of their collections and retained amounts. Municipalities found by comptroller audits to have retained more revenue than authorized would have to pay auditing costs.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

SUPPORTERS SAY:

CSHB 901 would discourage irresponsible drivers from running red lights. Drivers would know from signs, awareness programs, and experience that they could be cited for this dangerous behavior even when no police were visible nearby.

People who run red lights are among the most egregious traffic offenders. Disregarding red lights is the leading cause of urban crashes and fatalities. In 2000, 115 Texans died in accidents in which drivers disregarded red lights. Because police officers often cannot chase a driver who has run a red light without also running the light themselves, red-light violations are difficult to enforce, especially in the most dangerous intersections.

About 40 cities across the nation use traffic cameras. In cities where the systems are in use, red-light violations have dropped as much as 60 percent. The systems are effective and efficient, and they ensure public safety without exhausting law-enforcement resources. Thirteen major cities and 17 states have enacted laws similar to CSHB 901. They have averaged a 40 percent decline in accident rates per signal.

At least three Texas cities have had success with these systems. Other Texas cities should be encouraged to use new tools to stop motorists who ignore their responsibilities and endanger others. This bill would allow cities to recover all their costs and keep half of late-payment revenue.

Under CSHB 901, cities could choose whether to implement a traffic monitoring system. If a city chose to do so, its law enforcement officers could spend time fighting crimes rather than issuing traffic tickets, and public safety would not suffer.

Violations would be misdemeanors punished with civil penalties like parking tickets, not criminal offenses. A penalty would not constitute a conviction, nor would it affect a person's insurance premiums or driving record.

Unlike bills in previous legislative sessions, CSHB 901 would provide for two photos to be taken after a light turned red: one photo of the vehicle's license plate and another of the intersection. Citations would be mailed to vehicle owners, who would be presumed to be driving, just as when a driver is stopped for a violation when borrowing or otherwise driving someone else's car. There would be no arrest option or warrant issued for failure to pay.

Privacy concerns about CSHB 901 are overblown. Surveillance cameras are common in office buildings and public areas, especially since the beginning of the war on terrorism. The Texas Department of Transportation routinely monitors traffic by camera. Driving on public roadways governed by state law and local ordinances is not a private act above scrutiny. The purpose of the enforcement cameras is to ensure public safety, not to intrude on people's private lives or to raise funds for police or the state. Running a red light is a public act, not a private matter. Sufficient protections against misuse or disclosure of system photos will help assure that privacy is protected.

Revenue should be sufficient to cover system costs, but the bill should allay fears about creating "cash cows" by allowing cities to retain only enough money to cover those costs. Initial capital outlays could range from $100,000 to almost $500,000 per intersection, depending on the system chosen. Annual operating costs could total $60,000. According to the Legislative Budget Board, the state would realize little, if any, fiscal benefit from this bill.

The mandated traffic studies would augment this new technology and could persuade cities to forgo it in favor of other traffic-control measures, such as longer yellow-light illumination. Even that approach, however, would not deter speeders or aggressive drivers.

Most auto rental or lease contracts specify that drivers are responsible for traffic violations while renting or leasing vehicles. Granting owners rebuttable presumptions of responsibility for violations would close the loophole for contracts that are silent on this responsibility.

OPPONENTS SAY:

CSHB 901 would be self-defeating in creating a new enforcement mechanism for a crime the state is trying to deter, yet would lower the penalty. Doing so would diminish the suffering of accident victims of red-light runners. It also would be illogical and unfair to treat one class of red-light runners differently from another. Making red-light running on camera a civil matter while elevating disclosure of what should be public information to a Class A misdemeanor would set a bad precedent and would send the wrong message. If the Legislature is serious about reducing red-light running, it should upgrade the offense and/or increase the penalty, not reduce it to ease approval of the new photographic system and to save insurance policyholders from potential premium hikes.

This bill could not be enforced fairly. A motorist caught on camera running a red light would receive a civil penalty, while a motorist caught by an officer for the same offense would be subject to a misdemeanor conviction. Since a city typically would have to place cameras in its most dangerous intersections, people who committed the most ostensibly egregious offenses would receive smaller penalties than people who committed identical offenses elsewhere.

The proposed new monitoring systems would not solve the problem of running red lights. People would learn quickly which intersections were

monitored and which were not, and they would continue to run red lights at unmonitored intersections.

CSHB 901 is unnecessary. Cities committed to prosecuting red-light runners as criminals using automation may do so now without additional statutory authority. Most people who run steady red lights do not do so intentionally. Many violations occur because the lights are timed poorly or inconsistently. For a city to charge these drivers with violations would be to reap financial benefit from innocent mistakes. It would be more appropriate for these people to receive warning from officers, not citations through the mail.

Police should not be in the business of arbitrarily monitoring private lives. This kind of police action would discourage public trust in law enforcement. It also would be a gross invasion of privacy. If cameras were used today to catch motorists running red lights, they could be used tomorrow in virtually any venue to capture the pettiest of criminals. This would be the first step toward creating "Big Brother" that George Orwell warned about in *1984*.

It would be more cost-effective and less problematic, both technically and ethically, to lengthen the time that yellow caution lights appear before signals turn red. Cities that have tried this approach have found that it reduces red-light running by 50 percent for each second that yellow-light illumination is lengthened.

OTHER OPPONENTS SAY:

It would be unfair to municipalities to force them to return excess revenue generated by these systems to the state, which has little stake in reducing red-light running, maintaining urban intersections, or implementing the systems. These revenues should remain in local communities to help provide much-needed enhancement of law enforcement, traffic management, and infrastructure maintenance and repair, not to build highways or other projects that might not even benefit the cities using the new systems.

Records of criminal activity, especially activity that directly affects public safety, and law enforcement's response to it should be a matter of public record. Exempting photographs from public disclosure in the name of privacy would set a bad precedent and would hinder attempts to evaluate how this expensive and relatively new technology is accomplishing its purpose.

The bill should require municipalities to implement the findings of the mandatory traffic studies before installing photographic enforcement systems. Doing so could save both money and lives.

NOTES:

Among other changes to HB 901 as filed, the committee substitute would:

- require regular and periodic inspections of the enforcement system to ensure proper operation and calibration;
- specify criteria that municipalities could and could not use in selecting intersections for monitoring;
- specify that only a recorded image of the vehicle's license plate could be included in the violation notice mailed to the owner;
- require municipalities to remit to the comptroller quarterly, rather than annually, revenue designated for the Texas Mobility Fund;
- specify that owners of rental or lease vehicles would have a rebuttable presumption of responsibility for violations, and specify what evidence must be presented at administrative hearings;
- change the filing deadline for requesting administrative hearings from 15 to 30 days from the date the violation was mailed;
- require municipalities to dispose of all recorded images of the violation within 30 days after a finding of no violation or payment of penalty;
- declare a recorded image to be a law enforcement record not subject to public disclosure except upon request of the vehicle owner; and
- specify that municipal courts would have appellate jurisdiction over administrative hearing appeals.

Three similar bills were considered in recent sessions but failed in the House. During the 77th Legislature in 2001, HB 1115 by Driver, et al. failed to pass on second reading. During the 76th Legislature in 1999, HB 1152 by Driver, et al. was tabled. During the 74th Legislature in 1995, SB 876 by Cain passed the Senate but failed to pass the House on second reading.