

- SUBJECT:** Repealing local authority to civilly enforce traffic offenses
- COMMITTEE:** Urban Affairs — favorable, without amendment
- VOTE:** 4 ayes — Talton, Wong, Bailey, Blake
2 nays — A. Allen, Rodriguez
1 absent — Menendez
- WITNESSES:** For — Luke Ball, National Motorists Association; Scott Henson, ACLU of Texas; Paul Kubosh, Texas Municipal Justice Bar Association; Gerald Patrick Monks, Municipal Justice Bar Association of Texas and Harris County Municipal Justice Bar Association.

Against — Euline Brock, Mayor of Denton; Gary M. Brye, Memorial Villages Police Department; Steve Dye, Garland Police Department and City of Garland; Harold L. Hurtt, Houston Police Department and City of Houston; Brad Neighbor, City of Garland; Thomas O'Grady, Greater Houston Partnership; Walter Ragsdale, City of Richardson and Texas Institute of Transportation Engineers; E. Michael Simpson, Mayor of Frisco; Larry Zacharias, City of Richardson Police Department.

On — Carol Rawson, Texas Department of Transportation
- BACKGROUND:** Transportation Code, sec. 542.202 recognizes the right of local authorities to regulate traffic and certain traffic-related issues within their jurisdictions provided that that regulation does not conflict with state statute. Sec. 542.202(b)(3), which was added by the 78th Legislature, defines this regulation to include criminal, civil, and administrative enforcement of state laws and municipal ordinances.

Prior to the addition of sec. 542.202(b)(3), cities could issue only criminal citations for running a red light, which under state law is a misdemeanor punishable by a fine of up to \$200. Several cities have interpreted this new section as giving them the authority to make running a red light a civil offense and to enforce violations through the use of photographic traffic-signal enforcement systems, also known as “red-light cameras.” Although a 2002 attorney general’s opinion (JC-0460) established that cities already

had the authority to use this equipment, the requirement that criminal citations be served personally to the offender had proscribed their use. Since civil citations do not have to be served personally to the offender, creating a civil violation for running a red light facilitates the use of automated traffic enforcement systems that take a photograph of an offender's license plate and send a citation to the vehicle's owner through the mail.

DIGEST: HB 259 would repeal Transportation Code sec. 542.202(b)(3).

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, 2005.

SUPPORTERS
SAY:

HB 259 would eliminate a loophole that cities have exploited to use red light cameras contrary to the expressed will of the Legislature. The Legislature has consistently rejected legislation proposed in previous sessions to allow red-light cameras because these cameras are ineffective in increasing public safety, unfairly penalize offenders differently for committing the same crime, and have the potential to violate people's privacy. HB 259 also would ensure that cities do not further exploit this section of the Transportation Code to create additional civil violations unintended by the Legislature.

Red-light cameras do not increase public safety. Contrary to the assertions of red-light camera supporters, these cameras do not reduce vehicular accidents. In fact, recent studies have found that these cameras increase accidents, particularly rear-end collisions caused by motorists slamming on the brakes after seeing a red-light camera. These cameras thus trade one accident for another. These cameras also may be used as justification to reduce the number of police officers or shift officers to other, non-traffic divisions, further decreasing safety since, unlike officers, red-light cameras can not remove drunk or reckless drivers from the road.

More disturbingly, cities that employ red-light cameras have a perverse incentive to maintain or even increase the number of violations in order to maximize revenue. Several cities with these cameras in other states have been suspected of reducing the length of time their traffic lights stay yellow in order to increase the number of offenses and generate more revenue. This practice increases the potential for accidents, making intersections more dangerous. If cities are serious about increasing public

safety, more effective solutions exist for reducing the incidence of red-light running, including increasing the length of the yellow-light time and installing larger lenses to make the red light more visible. The fact that cities continue to promote red light cameras over these alternatives indicates that they are more interested in generating revenue than in increasing public safety.

Red-light cameras also remove the element of discretion in issuing a citation. Under certain circumstances, motorists may need to enter an intersection after a light turns red, such as to avoid a pedestrian or bicyclist or to allow an emergency vehicle to pass. Unlike police officers, red-light cameras do not make allowances for these extenuating circumstances. Moreover, since automatic traffic signal enforcement systems work on the presumption that the owner of a vehicle is the person driving at the time a violation is recorded, there is a high potential for issuing citations to innocent persons. For example, some people have complained that they have received citations after selling their car but before the change in registration was recorded. In other instances, people may have loaned their car to friends or children or even have had their car stolen. Such persons must either pay the fine or spend valuable time proving their innocence. Meanwhile, the most dangerous offenders — big-rig truck drivers — remain immune to enforcement since cities have no way to compel their companies to pay the fines.

Red light cameras violate equal protection by unfairly penalizing people differently for committing the same crime. Motorists caught running a red light by an officer are subject to a misdemeanor conviction, while those caught on camera for the same offense receive only a civil penalty. Since several cities have imposed or are considering imposing lesser fines for civil offenses, motorists caught on camera receive lesser penalties than those stopped by an officer. Moreover, since civil citations are not placed in the offender's driving record, those red light runners caught on camera are not subject to the increased insurance premiums often faced by those ticketed by officers. Some insurance companies have expressed concern that increased reliance on red-light cameras will make it harder for them to identify poor drivers and warn that they may need to increase premiums on all drivers in response. Cameras also violate the Sixth Amendment guarantee of being able to confront one's accuser, since there is no one who can testify as to the events that occurred that day nor any way to defend oneself against a machine that may have malfunctioned.

Red-light cameras also create the potential for privacy violations. It is of little comfort that the cameras currently employed by cities photograph only a car's license plate if they are capable of recording everyone in a vehicle. These cameras are the first step toward the creation of a "big brother" surveillance government.

By unintentionally giving local authorities the power to enforce violations civilly and administratively, this section of the law may unwittingly have opened the door to the creation of a whole patchwork of inconsistent regulation by cities. Such inconsistency can confuse drivers, further reducing safety. Although some cities claim to have implemented procedures that address some of the concerns relating to cameras, there is no guarantee that other cities will act responsibly. The broad enforcement powers in current law could possibly allow individual cities to penalize other violations not authorized by the Legislature, such as driving while talking on a cell phone. Traffic regulation should be consistent statewide in order to ensure the highest level of safety.

OPPONENTS
SAY:

With one of the highest rates of vehicular accidents and fatalities due to red light running in the nation, Texas needs an effective means of reducing red-light violations. In cities both in Texas and nationwide, red-light cameras have been shown to be an effective instrument in reducing violations and accidents. Cities should be allowed to continue to use this proven public safety tool.

The cost of red-light accidents in both human and economic terms is enormous. Each year, about 100 Texans die and thousands more are injured in accidents caused when drivers run red lights. Even excluding property damage, these accidents cost between \$1 billion and \$3 billion dollars each year in medical, insurance, and related expenses. Red-light accidents often are among the worst of all accidents because they generally involve vehicles crashing directly into the driver or passenger side of another car at very high speeds.

Automatic traffic signal enforcement systems have the capacity to reduce red-light violations significantly more than traditional enforcement. Because motorists know that there are not enough officers to monitor most lights, they have little incentive to stop. By contrast, red-light cameras can monitor intersections 24 hours a day, seven days a week, ensuring constant and consistent enforcement against violators. Since motorists know they will be caught if they run a red light, they are significantly

more likely to stop. As a result, cities that have employed these cameras have seen violations drop by as much as 60 percent, with a corresponding decline in accident rates of up to 40 percent. Although a few cities have noticed a slight initial increase in rear-end accidents, over time the number of accidents has returned to normal. Rear-end accidents also are much less dangerous than the side impacts caused when motorists run red lights. Reduced violations mean that officers can spend more of their time fighting crime rather than writing traffic tickets.

Cameras also are a safer means of enforcement than using traditional officers. In order to chase a motorist who has run a red light, officers often must run that same light, placing themselves and other motorists in danger. These cameras do not reduce discretion, since cities that have implemented cameras require members of their police departments to evaluate the photographs to determine whether a citation should be issued. Persons receiving a citation may also request a hearing at which they may explain any extenuating circumstances that contributed to the violation and request dismissal of the citation.

If the money generated through these cameras is truly a concern, the state could specify that such revenue be used only for traffic and public safety purposes, as the cities that have implemented these cameras already have done. These cities have kept camera-generated revenue in a separate fund, and these monies have been used to pay for needed public safety improvements, including increasing the number of police officers. The accusation that cities may manipulate yellow light time for financial gain is unproven and unfair. Neither red-light vendors nor police departments can sequence traffic lights, which are controlled by TxDOT or local traffic departments. These bodies sequence lights in accordance with federal and state regulations.

While concerns about conformity are important, cities proactively have addressed this issue by sharing information and implementing the same or very similar ordinances. In order to ensure the highest degree of conformity with state regulation, they have copied sections of the Transportation Code relating to civil enforcement of parking violations and procedures for enforcing those violations. Thus, there is little danger of creating conflicting or confusing local regulations.

Red-light cameras do not invade privacy any more than does traditional enforcement of red light violations. In fact, taking a photograph of a

vehicle's license plate is less invasive than requiring a motorist to produce a license when stopped by an officer. Similarly, concerns about the potential for surveillance seem disingenuous in the face of the already widespread use of surveillance cameras in office buildings and public areas and on roadways.

While it is true that red-light cameras are not the only means of reducing violations, red-light cameras should be allowed as one of many tools that local authorities may choose from in order to best address their local needs. Indeed, many cities that have employed these cameras also have implemented the other changes recommended by opponents of the cameras. Evidence suggests, however, that these various options are not equally effective; for example, motorists eventually become accustomed to longer yellow-light times and continue to run red lights. Cities that have found these other options to be inadequate should have the option of installing red-light cameras.

OTHER
OPPONENTS
SAY:

HB 259 would not specifically prohibit cities from using red light cameras. According to a 2002 attorney general's opinion, cities had the authority to employ these cameras prior to the addition of the section that this bill would remove. Therefore, deleting this section would not eliminate that authority. If the intent of the legislation is to ban red-light cameras, it would be more efficient to target these cameras directly.

NOTES:

A related bill, HB 1347 by Isett, would prohibit cities from installing a photographic traffic signal enforcement system.

Section 542.202(b)(3) of the Transportation Code was added by the 78th Legislature in SB 1184 by Deuell, which updated the Transportation Code to bring the statute into greater conformity with DPS procedures and federal regulations concerning commercial vehicles. The provision that HB 259 would repeal was added as a House floor amendment adopted without objection by nonrecord vote. The Senate concurred with the House amendments to the bill.

Several bills that would have authorized red light cameras have been considered by previous legislatures. HB 901 by King in the 78th Legislature and HB 1115 by Driver in the 77th Legislature both failed to

pass to engrossment. In the 76th Legislature, the House tabled HB 1152 by Driver. And during the 74th Legislature, SB 876 by Cain passed the Senate, but failed to pass the House on second reading.