

SUBJECT: Standards for red-light camera programs

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 6 ayes — Bailey, Murphy, Menendez, Cohen, Latham, Mallory Caraway
0 nays
1 absent — Martinez Fischer

SENATE VOTE: On final passage, April 3 — 28-2 (Seliger, Williams)

WITNESSES: For — Brad Neighbor, City of Garland; Anne O’Ryan, AAA Texas; Larry Zacharias, City of Richardson Chief of Police; (*Registered, but did not testify*: Beaman Floyd, Allstate, State Farm, USAA, Nationwide, American Insurance Association (TCAIS); Bruce Glasscock, City of Plano; Darrin Hall, City of Houston; Guy Irwin)

Against — Billy Clemons, City of Caldwell; Michael Kubosh; (*Registered, but did not testify*: Ken Evans, Round Rock Police Department)

On — Debbie Russell, American Civil Liberties Union-Texas

BACKGROUND: In February 2002, then-Atty. Gen. John Cornyn issued an opinion on red-light cameras (RLCs), determining that cities could use them but could not impose a civil penalty for red-light running because it would conflict with state law requiring the violation to be punished with a criminal penalty.

In 2003, the 78th Legislature enacted SB 1184 by Deuell, amending Transportation Code, sec. 542.202 to allow local authorities to regulate roads in their jurisdictions in accordance with state law or municipal ordinance through criminal, civil, and administrative enforcement against a person, including the owner or operator of a motor vehicle. On June 23, 2006, following a request from the Texas Department of Transportation (TxDOT) for legal guidance, Atty. Gen. Greg Abbott issued an opinion that use of RLCs is allowed on state roads. More than two dozen municipalities have cited one or both of these standards in installing or exploring an RLC program over the past four years.

DIGEST:

SB 1119 would create Transportation Code, ch. 707, establishing procedures for local entities that opted to use cameras to cite owners of vehicles that illegally run through red lights. The bill would provide processes for establishing a program, contracting certain duties to a vendor, imposing a civil penalty, and creating a hearing and appeals process. Any program consisting of a camera system and vehicle sensor working in conjunction with a traffic light that could produce at least two images of a license plate of a vehicle running a red light would be eligible.

Establishing a program. The governing body of any entity authorized to enact traffic laws would be able, by ordinance, to implement an RLC system. The owner of a motor vehicle would be subject to a civil penalty if the vehicle ran the red light in violation of Transportation Code, sec. 544.007(d). An ordinance adopted under this program would entitle a person cited through this system to a hearing and would:

- provide for the time when the hearing would have to be held;
- provide for the appointment of a hearing officer; and
- designate which office would be responsible for enforcing and administering the ordinance or delegate that duty to a company with which the entity had contracted to install the system.

Installing a system. A governmental entity would have the option of installing and operating the system itself or contracting with a vendor to perform that task. Intersections for the red-light program would be determined by traffic volume, accident history, and frequency of red-light violations, but not by ethnic or socioeconomic characteristics of an area. Any traffic signal for an intersection under this program would have to maintain a steady yellow light for the minimum time specified in the Texas Manual on Uniform Traffic Control Devices.

An entity could authorize a vendor to administer and enforce the system, but would not be allowed to enter into a contract that granted a company a specified percentage or dollar amount for each civil penalty collected. The local entity would be required to conduct a traffic engineering study of any intersection approach proposed for use under the program to determine whether a design change could be used in lieu of, or in addition to, a red-light system to reduce violations at the intersection. If the entity failed to adhere to these two provisions, it would not be allowed to impose a civil penalty under the program.

Enforcement. A civil penalty under this program would be initiated by the mailing of a notice of violation to the owner of a vehicle caught running a red light by the camera. This notice would have to be sent within 30 days after the date of the violation to the owner at the address provided through registration records of TxDOT or a companion agency in another state or country. It would be presumed that the owner had received notice by the fifth day after it was sent. The notice would be required to contain:

- a description of the violation, including the time and date;
- the location of the intersection where the violation occurred;
- the name and address of the vehicle's owner;
- the registration number displayed on the vehicle's license plate;
- a copy of the photo, limited solely to a depiction of the registration number as displayed on the vehicle's license plate;
- the amount of the fine associated with the civil penalty and a notice that a late penalty would be incurred if the fine was not either paid or contested by a written request for an administrative adjudication hearing within a specified period;
- a statement that the owner could opt to pay the fine in lieu of appearing at the hearing, the date and time of which would be specified; and
- a statement that a failure to pay or contest the charge in a timely manner would be an admission of liability and a waiver of an owner's right to appeal.

Implementation of an RLC program would not preclude an officer from citing a person for running a red light. An entity would not be allowed to impose a civil penalty through an RLC system on such an occasion.

A civil penalty would not be considered a conviction, except for the purposes of issuing points on the driver's record under the driver responsibility program (Transportation Code, ch. 708). Failure to pay this penalty could not result in issuance of an arrest warrant against the vehicle owner nor could it be recorded on the owner's driving record. It could, however, result in TxDOT or a county assessor-collector refusing to register the motor vehicle involved in the violation.

Presumptions. Under the RLC program, it would be presumed the owner of the vehicle shown in a photo depicting an violation committed the infraction. If, at the time of the violation, the vehicle was owned by a

different person or a person in the business of selling, renting, or leasing vehicles, a civil penalty could not be imposed on the person presumed to have committed the infraction upon presentation of evidence establishing that the vehicle at the time of the offense was:

- being test driven by another person;
- being rented or leased to another person; or
- owned by a person not named in the violation notice.

This evidence would have to be presented through testimony at an administrative adjudication hearing, by affidavit, or by a written declaration under penalty of perjury. For vehicles leased or rented through a business, the owner would be required to provide, within 30 days of receiving notice of a civil penalty, the name and address of the renter or lessee and a statement documenting that agreement during the period covering the date of the infraction. If the owner provided this information to the local entity or contractor enforcing the program, the renter or lessee would be assumed to have committed the violation and would be subject to a civil penalty.

Hearing and appeal. A person who received a notice of violation under this program could contest the civil penalty by requesting an administrative adjudication hearing. The request would have to be made prior to the deadline set in the notice, which could be no earlier than 30 days after the mailing of the violation. A local entity or contractor would notify the person of the time and date of the hearing and designate a hearing officer for the case. Upon conclusion of the hearing, the officer would be required to determine whether the person was liable for the civil penalty, and if so, the amount of the civil penalty for which the person was liable. This finding would be filed with the local entity.

An owner contesting the hearing officer's finding could appeal that decision by filing an appeal petition with the clerk of a justice or municipal court, depending on the location of the violation. The petition would have to be filed within 31 days of the hearing officer's finding and be accompanied by payment of court costs. The court clerk would notify the vehicle owner and appropriate government office of the date, time, and place of the hearing. The owner still would be required to pay the fine associated with the civil penalty unless, prior to filing the appeal, the owner posted bond in the amount of the civil penalty with the clerk of the court. The court would hear the appeal through trial de novo — a new trial

without regard to the finding made at the administrative hearing. The bill also would amend the respective sections of the Government Code providing for the new jurisdiction for a justice court (sec. 27.031) and a municipal court (sec. 29.003).

A person who failed to make a timely request for a hearing or payment of a penalty would be entitled to a hearing if the person submitted a written request to the hearing officer along with an affidavit attesting to the date the notice was received. The same time frame to respond would be applied to the date specified in the affidavit, and if the request was made within the time limit, the person would be granted a hearing.

Effective date. This bill would take effect September 1, 2007, but only if SB 125 by Carona also were enacted. Provisions governing installation of an RLC system would apply only to contracts entered on or after the effective date.

**SUPPORTERS
SAY:**

SB 1119 would create a uniform standard for RLC programs in Texas. These programs have been used with great success for the last several years across the state. Codifying uniform standards for RLC programs would remove any lingering uncertainty about the legality of the programs while establishing a procedure that all entities would have to follow to ensure that safety was the paramount concern for implementing a RLC program. Although not everyone in favor of this bill endorses the cameras themselves, SB 1119 is a recognition of their use statewide and the political will of the municipalities that have established these programs.

Accidents caused by Texas drivers who run red lights are extremely costly in human and economic terms. The Texas Department of Public Safety (DPS) crash database shows injuries and fatalities stemming from red-light crashes grew from 10,000 annually in 1975 to 24,000 per year in 2001, and a recent Federal Highway Administration study identified Texas as one of the worst states for red-light running. The financial costs of these accidents in Texas have been estimated at between \$1.4 billion and \$3 billion annually in medical, insurance, and related expenses. Red-light accidents often are among the worst because they generally involve vehicles crashing directly into the driver or passenger side of another car at high speeds.

More than 110 cities and at least 12 states and the District of Columbia employ RLCs. Several government and private studies have demonstrated

their benefit in reducing violations and accidents. Although most studies have shown increases in rear-end crashes, due in part to drivers slamming on their brakes to avoid running the light, these accidents are nowhere near as dangerous as a “T-bone,” or sideswipe, accident.

Uniformity. SB 1119 would create a statewide standard that would be clear to drivers, who otherwise could face different rules and penalties in different jurisdictions. Without this program, a few municipalities could ruin the program for everyone by charging excessive fines or inappropriately using revenue, which could prompt a legal challenge, a legislative ban, or both. The bill would provide the statutory framework for every RLC program across the state. Because no other statute specifically addresses this program, and because this statute would be more recent and more specific than any other provisions under which RLC programs have been implemented, this statute should govern all programs. SB 1119 is based on the programs currently in effect, but all cities that wished to better protect themselves from legal challenges would be well served to conduct their programs under these provisions.

SB 1119 would prevent an entity from entering into a contract based on the number of citations issued, reducing incentives for RLC programs to issue large numbers of citations. The bill also would ensure that all intersections targeted for use with an RLC program timed their yellow lights in accordance with state standards and underwent an engineering study prior to installation of the cameras. Provisions that would address limitations on penalties and provide requirements for usage of revenue are contained in SB 125 by Carona, a related piece of legislation that must be enacted for SB 1119 to take effect.

Effect on enforcement. Under most RLC programs operated in Texas, municipalities have little ability to compel payment from offenders, and SB 1119 would create penalties to increase a motorist’s motivation to pay. The bill would allow a county or TxDOT to deny registration to the owner of a vehicle with unpaid fines. This program would be permissive, and a county or TxDOT could decide, given proper evidence, not to use this authority under certain circumstances. Additionally, the bill would add points to the owner’s driving record, but these points would not be accessible by insurance companies under the standard record companies use in determining driver risk and associated rates.

RLCs act as a “force multiplier” by allowing for the enforcement of traffic law while enabling police to focus more of their efforts on other more pressing concerns, such as removing some of the most reckless drivers, including drunk drivers, from the roads. A camera also could serve as a valuable tool in determining the cause of a red-light running accident without witnesses.

Effect on motorists. The standards for RLC programs in SB 1119 would allow a person who felt wrongly accused several opportunities to be heard, both through a hearing and appeals process. These forums would provide a motorist ample opportunity to explain what happened and allow an administrative official the same discretion an officer at the scene would have had.

Privacy claims brought by drivers on public roads have been rejected by courts around the country. The fact that cameras already are used widely in Texas, including at toll booths, with little public complaint proves they not only are effective, but also are relatively noninvasive. The cameras are not constantly running — they are triggered to take photos only after a motorist has run a red light. Under SB 119, RLCs in Texas would be allowed to photograph only the vehicle and license plate but not the driver. The bill would further protect privacy rights by sending an offender a copy of the license plate and not the vehicle.

OPPONENTS
SAY:

This bill would create statewide standards for a system with questionable safety benefits. The state instead should be taking the opposite step — banning RLCs and exploring other options that could have more beneficial safety effects, such as lengthening yellow-light time, making lights more visible, and exploring engineering solutions to problems that may have caused drivers to run the light.

While some studies and statistics have touted the success of RLCs, several states and municipalities have reached different conclusions. Two states have canceled their programs, and at least four others have banned the cameras altogether. Various studies have found installation of the cameras increased rear-end crashes and crashes resulting in severe injuries and fatalities.

Uniformity. RLCs are used by some municipalities as a cash cow, and this bill would set few limitations on a governmental entity more interested in revenue than public safety. At least one Texas city has

increased fees beyond the generally accepted \$75 rate, and at least one other has used RLC revenue for its general budget.

Effect on enforcement. Cameras cannot use discretion, as an officer on the scene can, and choose not to, cite a motorist because of bad weather or participation in a funeral procession, for example. Additionally, cameras cannot remove reckless or drunken drivers from the road and could evolve into a replacement for uniformed traffic officers.

Effect on motorists. RLCs deny a driver's ability to confront his or her accuser, as guaranteed under the Sixth Amendment. A camera cannot testify as to what happened, and an accused motorist cannot offer a defense against a machine that may have malfunctioned and snapped a picture when the light was not red.

Use of RLCs is akin to "Big Brother" spying on the drivers of Texas. Surveillance cameras are popping up everywhere, with public and private cameras installed on many streets and buildings to monitor traffic and guard against break-ins. RLC programs violate the Fourth Amendment's protection against unreasonable search and seizure. City governments unreasonably deploy cameras on public roads without probable cause to believe that any particular motorist will violate the law.

OTHER
OPPONENTS
SAY:

Although this bill wisely would create statewide standards for RLC programs, several provisions would undercut this effort, including the lack of any language requiring an entity operating an RLC program to follow this model. This bill should either require these standards for all cities that opt to use RLCs or to repeal the current statute municipalities use to operate a program (Transportation Code, sec. 542.202).

Uniformity. Repealing sec. 542.202 also would reduce the opportunity for municipalities to use criminal, civil, or administrative penalties against a motorist for violating other state laws or municipal ordinances. While municipalities thus far have used this provision only to operate RLC programs, it could be construed to govern a variety of other actions not explicitly covered by state law, such as prohibiting the use of a cell phone while driving.

In order to ensure safety is indeed the paramount concern under a RLC program, this bill should enhance the requirements for an engineering study at an intersection that would be used under the program. Simply

mandating a study would not go far enough. Instead, the bill should require an entity to implement any engineering changes that would reduce accidents and violations and determine if such an action would eliminate the need for an RLC. Without such a provision, it could appear a city was more interested in generating revenue than preventing accidents.

This bill also should provide a statewide standard for use and sharing of images by entities that operate RLC programs. Images captured by RLCs are considered open records subject to discovery under the Texas Public Information Act and can be subpoenaed by courts and insurance companies in traffic disputes. However, a party requesting the information must have key information such as the time, date, and location of the offense because cities that use RLCs do not necessarily file the images under the violators' names.

Effect on enforcement. Although this bill would apply only a civil penalty to vehicle owners, additional penalties could have severe effects on motorists and counties. Denying registration to a vehicle owner would be excessive, especially given that most people renew their registration a few days before it expires. In such an instance, especially in a case in which the vehicle owner did not know of the offense, this bill essentially would force motorists to either stop driving or drive with an expired registration. For every person who delayed or failed to register a vehicle, the county would lose revenue. Additionally, if a driver accumulated enough points through running red lights, the driver eventually could lose his or her license, which assuredly would be contained in the driver's record available to insurance companies when setting rates.

Although the bill would prohibit an entity from issuing a civil penalty if a criminal citation had already been issued for the same violation, this bill does not provide for what would happen if a person inadvertently was issued a civil and a criminal penalty, allowing an enterprising motorist to pay the civil penalty and successfully contest the criminal violation on the basis that the driver already had been punished for the offense. It also would not fully provide for all interactions with uniformed officers. In the event an officer pulled over a driver for running a red light at a monitored intersection and used discretion not to cite the person, a civil penalty could and would still be issued under this program.

Effect on motorists. Most cities employing RLCs employ methods that have been shown to reduce the number of hearings and appeals, while still

protecting drivers' privacy, by allowing drivers to actually see violations occur. Many cities send a vehicle's owner a picture of the actual violation that includes not only the license plate but the actual vehicle. Others allow the owners to visit a secure Web site to watch a video loop of the infraction.

NOTES:

SB 125 by Carona, which is set for the May 16 General State Calendar, would cap civil penalties imposed under an RLC program at \$75 and late fees at \$25. It would mandate that 50 percent of any revenue generated above the amount needed to purchase, install, operate, and maintain a system be sent to the state to fund uncompensated care at designated regional trauma facilities. The Senate passed SB 125 by 26-4 on April 3, and the House Urban Affairs Committee reported the bill favorably without amendment on April 18. If passed by the House, it could take effect only upon enactment of SB 1119.

According to the Legislative Budget Board, SB 1119 would have no fiscal impact on the state but would increase costs for local governments that created a red-light program after the effective date due to the required engineering study for any intersection at which a camera would be installed. Counties also could experience a reduction in revenue for any denied vehicle registration.