

BILL ANALYSIS

Senate Research Center

S.B. 2060
By: Lucio
Transportation & Homeland Security
5/1/2009
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Pick-ups and drop-offs are the most dangerous times of the day for the estimated 1.4 million Texas children who ride a bus to school.

This bill seeks to use technologies that increase the overall safety of children entering, riding, and exiting school buses, while providing new revenue streams to the city and school district. This bill is permissive and simply gives school districts the option to utilize this technology. The decision will be made at the local level. Currently, five school districts around the state are looking at this option.

As proposed, S.B. 2060 amends current law relating to school bus safety, including the authority of a school district to implement a monitoring system that captures images of vehicles passing illegally; creates an offense; and provides for the imposition of civil and criminal penalties.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 547.701(b), Transportation Code, to authorize a school bus to be equipped with a monitoring system that is capable of taking photographic or digital images, including video images, of vehicles that pass the bus when the bus is stopped to load and unload students, is capable of producing a live visual image of a child inside the bus that can be viewed remotely, and conforms to regulations adopted under Section 34.002 (Safety Standards), Education Code.

SECTION 2. Amends Section 545.066, Transportation Code, by adding Subsection (g), as follows:

(g) Authorizes an image recorded by a school bus monitoring system described by Section 547.701(b)(3) (relating to monitoring system capabilities) to be used in the prosecution of an offense under this section if the image is otherwise admissible as evidence, clearly shows the vehicle, including the license plate attached to the vehicle, at the time the offense was alleged to have occurred, and is accompanied by an affidavit executed by a peace officer who inspected the image attesting to its authenticity.

SECTION 3. Amends Chapter 11, Education Code, by adding Subchapter I, as follows:

SUBCHAPTER I. CIVIL PENALTY FOR ILLEGALLY PASSING SCHOOL BUS

Sec. 11.401. DEFINITIONS. Defines "local authority," "owner of a motor vehicle," and "school bus monitoring system."

Sec. 11.402. AUTHORITY TO PROVIDE FOR CIVIL PENALTY. (a) Authorizes the board of trustees of a school district (board) by resolution to impose a civil penalty on the owner of a motor vehicle operated in a manner that violates Section 545.066 (Passing a School Bus; Offense), Transportation Code.

(b) Requires that a resolution adopted under this section:

- (1) provide for a civil penalty of not less than \$200 or more than \$1,000;
- (2) authorize a local law enforcement agency, an attorney employed by the school district, or an attorney with whom the school district contracts to bring suit to collect the penalty;
- (3) permit the use of images recorded by a school bus monitoring system only for the purposes described by Section 11.404(a);
- (4) provide that a person against whom the school district seeks to impose a penalty is entitled to an administrative adjudication hearing provided by the district or by a local authority with which the district enters into a memorandum of understanding under Section 11.403(a)(2) and specify the period in which the hearing is required to be held, and provide for the appointment of a hearing officer with authority to administer oaths and issue orders compelling the attendance of witnesses and the production of documents;
- (5) designate the department or office of the school district responsible for the enforcement and administration of the resolution or provide that a local law enforcement agency with which the school district enters into a memorandum of understanding under Section 11.403(a)(2) is responsible for the enforcement and administration of the resolution; and
- (6) provide for other procedures that board determines necessary for the imposition of a penalty authorized by this section.

(c) Provides that Chapter 133 (Criminal and Civil Fees Payable to the Comptroller), Local Government Code, does not apply to a civil penalty imposed by this subchapter.

Sec. 11.403. OPERATION OF SCHOOL BUS MONITORING SYSTEM. (a) Authorizes a school district that implements a school bus monitoring system to:

- (1) install and operate the system or contract with a vendor for the installation or operation of the system; and
- (2) enter into memoranda of understanding with a local authority regarding administrative adjudication hearings conducted under this subchapter, and a local law enforcement agency regarding the collection of civil penalties imposed under this subchapter and the enforcement of Section 545.066, Transportation Code.

(b) Requires a vendor that contracts with a school district for the operation of a school bus monitoring system to advise the district and appropriate law enforcement agencies of all information recorded by the system relating to a violation or suspected violation of Section 545.066, Transportation Code, within 24 hours after the occurrence of the violation or suspected violation.

Sec. 11.404. GENERAL SURVEILLANCE PROHIBITED; OFFENSE. (a) Authorizes a school district to operate a school bus monitoring system only for the purpose of detecting a violation or suspected violation of Section 545.066, Transportation Code, collecting a civil penalty imposed under this subchapter, and monitoring the safety of children on the bus.

(b) Provides that a person commits an offense if the person uses a school bus monitoring system to produce a recorded image other than in the manner and for the purpose specified by this subchapter.

(c) Provides that an offense under this section is a Class A misdemeanor.

Sec. 11.405. USE OF REVENUE. Requires revenue from penalties imposed by a school district under this subchapter to be deposited in the maintenance and operation fund or the general fund of the district to pay, as necessary, costs related to school bus monitoring systems, including:

(1) the costs of purchasing, leasing, or installing equipment that is part of, or that is used in connection with, a system, including labor costs, and operating and maintaining a system, including costs of creating, distributing, and delivering violation notices, reviewing violations conducted by district employees, and processing fine payments and collections, and costs associated with administrative adjudications and appeals; and

(2) as applicable, amounts due a vendor contracting with the district under Section 11.403(a)(1), and a local law enforcement agency or a local authority that enters into a memorandum of understanding with the district under Section 11.403(a)(2).

Sec. 11.406. NOTICE OF VIOLATION; CONTENTS. (a) Provides that the imposition of a civil penalty under this subchapter is initiated by the mailing of a notice of violation to the owner of the motor vehicle against whom the school district seeks to impose the penalty.

(b) Requires the designated department or office of the school district, or, if applicable, the local law enforcement agency with which the school district has entered into a memorandum of understanding under Section 11.403(a)(2), not later than the 30th day after the date the violation is alleged to have occurred, to mail the notice of violation to the owner at:

(1) the owner's address as shown on the registration records of the Texas Department of Transportation (TxDOT); or

(2) if the vehicle is registered in another state or country, the owner's address as shown on the motor vehicle registration records of the department or agency of the other state or country analogous to TxDOT.

(c) Requires that the notice of the violation contain certain descriptive information.

(d) Provides that a notice of violation is presumed to have been received on the fifth day after the date the notice is mailed.

Sec. 11.407. ADMISSION OF LIABILITY. Provides that a person who fails to pay the civil penalty or to contest liability for the penalty in a timely manner, or who requests an administrative adjudication hearing to contest the imposition of the civil penalty against the person and fails to appear at the hearing, is considered to:

(1) admit liability for the full amount of the civil penalty stated in the notice of violation mailed to the person; and

(2) waive the person's right to appeal the imposition of the civil penalty.

Sec. 11.408. PRESUMPTION. (a) Provides that it is presumed that the owner of the motor vehicle committed the violation alleged in a notice of violation mailed to the person under Section 11.406 if the motor vehicle depicted in a photograph or digital image taken by a school bus monitoring system belongs to the owner of the motor vehicle.

(b) Provides that if, at the time of the violation alleged in the notice of violation, the motor vehicle depicted in a photograph or digital image taken by a school bus monitoring system was owned by a person in the business of selling, renting, or leasing motor vehicles or by a person who was not the person named in the notice of violation, the presumption under Subsection (a) is rebutted on the presentation of evidence establishing that the vehicle was at that time being test-driven by another person, being rented or leased by the vehicle's owner to another person, or owned by a person who was not the person named in the notice of violation

(c) Requires the presentation of evidence under Subsection (b) by a person who is in the business of selling, renting, or leasing motor vehicles or who did not own the vehicle at the time of the violation, notwithstanding Section 11.409, to be made by affidavit, through testimony at an administrative adjudication hearing under Section 11.409, or by a written declaration under penalty of perjury. Authorizes the affidavit or written declaration to be submitted by mail to the school district, or, if appropriate, to the local law enforcement agency with which the district has entered into a memorandum of understanding under Section 11.403(a)(2).

(d) Prohibits a civil penalty, if the presumption established by Subsection (a) is rebutted under Subsection (b), from being imposed on the owner of the motor vehicle or the person named in the notice of violation, as applicable.

(e) Requires the owner of the motor vehicle if, at the time of the violation alleged in a notice of violation, the motor vehicle depicted in the photograph or digital image taken by the school bus monitoring system was owned by a person in the business of renting or leasing motor vehicles and the vehicle was being rented or leased to an individual, to provide to the school district, or if applicable, to the local law enforcement agency with which the district has entered into a memorandum of understanding under Section 11.403(a)(2), the name and address of the individual who was renting or leasing the motor vehicle depicted in the photograph or digital image and a statement of the period during which that individual was renting or leasing the vehicle. Requires the owner to provide the information required by this subsection not later than the 30th day after the date the notice of violation is received. Provides that if the owner provides the required information, it is presumed that the individual renting or leasing the motor vehicle committed the violation alleged in the notice of violation and the school district or local law enforcement agency is authorized to send a notice of violation to that individual at the address provided by the owner of the motor vehicle.

Sec. 11.409. ADMINISTRATIVE ADJUDICATION HEARING. (a) Authorizes a person who receives a notice of violation under this subchapter to contest the imposition of the civil penalty specified in the notice of violation by filing a request for an administrative adjudication hearing. Requires the request for a hearing to be filed on or before the date specified in the notice of violation, which is prohibited earlier than the 30th day after the date the notice of violation was mailed.

(b) Requires the school district, on receipt of a timely request for an administrative adjudication hearing, after consulting with the local authority, if appropriate, to notify the person of the date and time of the hearing.

(c) Requires a hearing officer designated by the school district or the local authority to conduct the administrative adjudication hearing.

(d) Requires that the issues, in an administrative adjudication hearing, be proven by a preponderance of the evidence.

(e) Provides that the reliability of the school bus monitoring system used to produce the recorded image of the motor vehicle involved in the violation may be attested to by affidavit of an officer or employee of the school district, or, if

appropriate, of the vendor with which the district contracts under Section 11.403(a)(1) and that is responsible for operating and maintaining the system.

(f) Provides that an affidavit of an officer or employee of the school district, or, if appropriate, of a peace officer employed by a local law enforcement agency with which the district has entered into a memorandum of understanding under Section 11.403(a)(2), that alleges a violation based on an inspection of the applicable recorded image is admissible in the administrative adjudication hearing and in an appeal under Section 11.411, and evidence of the facts contained in the affidavit.

(g) Requires the hearing officer, at the conclusion of the administrative adjudication hearing, to enter a finding of liability for the civil penalty or a finding of no liability for the civil penalty. Requires a finding under this subsection to be in writing and be signed and dated by the hearing officer.

(h) Requires a finding of liability for a civil penalty to specify the amount of the civil penalty for which the person is liable. Prohibits a civil penalty for the violation, if the hearing officer enters a finding of no liability, from being imposed against the person.

(i) Authorizes a finding of liability or a finding of no liability entered under this section to be filed with the school district, with the clerk or secretary of the local authority, or with a person designated by the governing body of the local authority, as appropriate, and be recorded on microfilm, microfiche, or any other electronic storage media.

Sec. 11.410. UNTIMELY REQUEST FOR ADMINISTRATIVE ADJUDICATION HEARING. Provides that a person, notwithstanding any other provisions of this subchapter, who receives a notice of violation under this subchapter and who fails to timely pay the amount of the civil penalty or fails to timely request an administrative adjudication hearing is entitled to an administrative adjudication hearing if:

(1) the person submits a written request for the hearing to the designated hearing officer, accompanied by an affidavit that attests to the date on which the person received the notice of violation; and

(2) the written request and affidavit are submitted to the hearing officer within the same number of days after the date the person received the notice of violation as specified under Section 11.406(c)(7) (relating to the number of days the person has in which to pay or contest the imposition of the civil penalty).

Sec. 11.411. APPEAL. (a) Authorizes the owner of a motor vehicle determined by a hearing officer to be liable for a civil penalty to appeal that determination to a judge by filing an appeal petition with the clerk of the court. Requires that the petition be filed with a justice court of the county in which the school is located or if the school district is located within a municipality, the municipal court of the municipality.

(b) Requires the petition to be filed before the 31st day after the date on which the administrative adjudication hearing officer entered the finding of liability for the civil penalty, and accompanied by payment of the costs required by law for the court.

(c) Requires the court clerk to schedule a hearing and notify the owner of the motor vehicle and the school district, or, if appropriate, the local law enforcement agency with which the district has entered into a memorandum of understanding under Section 11.403(a)(2), of the date, time, and place of the hearing.

(d) Provides that an appeal stays enforcement and collection of the civil penalty imposed against the owner of the motor vehicle. Requires the owner to file a notarized statement of personal financial obligation to perfect the owner's appeal.

(e) Requires that an appeal under this section be determined by the court trial de novo.

Sec. 11.412. ENFORCEMENT. Authorizes the county tax assessor-collector or TxDOT, if the owner of a motor vehicle is delinquent in the payment of a civil penalty imposed under this subchapter, to refuse to register a motor vehicle alleged to have been involved in the violation.

Sec. 11.413. IMPOSITION OF CIVIL PENALTY NOT A CONVICTION. Provides that the imposition of a civil penalty under this subchapter is not a conviction and is prohibited from being considered a conviction for any purpose.

Sec. 11.414. FAILURE TO PAY CIVIL PENALTY. Provides that if the owner of the motor vehicle fails to timely pay the amount of the civil penalty imposed against the owner an arrest warrant may not be issued for the owner and the imposition of the civil penalty may not be recorded on the owner's driving record.

SECTION 4. Amends Section 27.031(a), Government Code, to provide that in addition to the jurisdiction and powers provided by the constitution and other law, the justice court has original jurisdiction of cases arising under Chapter 707 (Photographic Traffic Signal Enforcement System), Transportation Code, and Chapter 11 (School Districts), Education Code, outside a municipality's territorial limits.

SECTION 5. Amends Section 29.003(g), Government Code, to require a municipal court, including a municipal court of record, to have exclusive appellate jurisdiction within the municipality's territorial limits in a case arising under Chapter 707, Transportation Code, or Chapter 11, Education Code.

SECTION. Effective date: upon passage or September 1, 2009.