

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1235 Enforcement of Traffic Laws

SPONSOR(S): Schenck and others

TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Rows include: 1) Governmental Affairs Policy Committee (7 Y, 5 N, Haug, Williamson); 2) Military & Local Affairs Policy Committee (8 Y, 6 N, Rojas, Hoagland); 3) Economic Development & Community Affairs Policy Council (10 Y, 5 N, Haug, Tinker); 4) and 5) are empty.

SUMMARY ANALYSIS

Current law requires that traffic citations be issued when an officer observes the commission of a traffic infraction. A 1997 Attorney General opinion concluded that nothing precludes the use of unmanned cameras to record traffic violations, but a photographic record of a vehicle violating traffic control laws may not be used as the basis for issuing a citation for such violations. A 2005 Attorney General opinion also reached the same conclusion providing that legislative changes are necessary before local governments may issue traffic citations and penalize drivers who fail to obey red light indications on traffic signal devices as collected from a photographic record from unmanned cameras monitoring intersections. The 2005 opinion also concluded that it was within a local government's scope of authority to enact an ordinance authorizing it to:

- Monitor violations of traffic signals within the city and to use unmanned cameras to monitor intersections and record traffic violations;
- Monitor violations of traffic signals within the city and to use unmanned cameras to record the license tag numbers of cars involved in such violations; and
- Advise a car owner that his or her license tag number has been recorded in a violation of the traffic laws.

Several local governments have participated in the use of red light camera enforcement of red light violations. Due to the Attorney General's advisory opinions, some local governments have used the cameras in pilot projects solely for data collection purposes or as a warning system to motorists, by sending a letter and attaching no penalty. The City of Gulf Breeze was one of the first municipalities to pass an ordinance allowing use of red light cameras for enforcement purposes. It provided that a violation by any motor vehicle running a red light that is recorded by a traffic enforcement photographic system is a civil code violation and a \$100 civil fee is assessed against the motor vehicle owner. Other municipalities have followed a similar path of first doing a study and then using red light cameras for enforcement.

Legal challenges to red light camera ordinances are pending in various courts. At least one court has invalidated violations of traffic control signals when a law enforcement officer is not physically present.

The bill prohibits the use of traffic infraction detectors and cameras by counties and municipalities to enforce traffic laws and preempts to the state the use of traffic infraction detectors to enforce traffic laws.

This bill could have a negative fiscal impact on those local governments having installed red light cameras and on those local governments using such cameras to generate revenue through the collection of civil fees or fines.

The bill is effective upon becoming a law.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

According to the Department of Highway Safety and Motor Vehicles, in 2008 there were 76 Florida fatalities related to motor vehicle drivers who disregarded a traffic signal.<sup>1</sup> This represents approximately 3 percent of all fatal accidents in 2008, the sixth-highest cause of traffic fatalities.<sup>2</sup> Injuries related to motor vehicle drivers disregarding a red light in Florida were 5,607 in 2008, which represented 4.36 percent of all injury accidents.<sup>3</sup> Injuries from disregarding traffic signals have steadily decreased since 1998,<sup>4</sup> as have property damage-only crashes which were less than 3 percent in 2008.<sup>5</sup> The rate of decrease has been fairly uniform during that period and had decreased to 30 injury-related accidents per 100,000 in 2008.

##### Red Light Camera Use in Florida

Current law requires that traffic citations be issued when an officer observes the commission of a traffic infraction.<sup>6</sup> A 1997 Attorney General opinion concluded that nothing precludes the use of unmanned cameras to record traffic violations, but a photographic record of a vehicle violating traffic control laws may not be used as the basis for issuing a citation for such violations.<sup>7</sup> A 2005 Attorney General opinion also reached the same conclusion providing that legislative changes are necessary before local governments may issue traffic citations and penalize drivers who fail to obey red light indications on traffic signal devices as collected from a photographic record from unmanned cameras monitoring intersections.<sup>8</sup> The 2005 opinion also concluded that it was within a local government's scope of authority to enact an ordinance authorizing it to:

- Monitor violations of traffic signals within the city and to use unmanned cameras to monitor intersections and record traffic violations;

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<sup>1</sup> *Florida Traffic Crash Statistics Report 2008*, Department of Highway Safety and Motor Vehicles, June 30, 2009 at 37 (on file with the Governmental Affairs Policy Committee).

<sup>2</sup> Careless driving represented 20 percent of 2008 traffic fatalities; DUI, 17 percent; excessive speed, 6 percent; driving left-of-center, 6 percent; and failure to yield right of way, 6 percent.

<sup>3</sup> *Florida Traffic Crash Statistics Report 2008*, Department of Highway Safety and Motor Vehicles, June 30, 2009 at 37.

<sup>4</sup> *Red Light Running Cameras: Would Crashes, Injuries and Automobile Insurance Rates Increase if They are Used in Florida?*, Florida Public Health Review, 2008 5:1-7 at 2.

<sup>5</sup> *Id.*

<sup>6</sup> Section 316.640(5)(a), F.S.

<sup>7</sup> Attorney General Opinion 97-06.

<sup>8</sup> Attorney General Opinion 05-41.

- Monitor violations of traffic signals within the city and to use unmanned cameras to record the license tag numbers of cars involved in such violations; and
- Advise a car owner that his or her license tag number has been recorded in a violation of the traffic laws.

Several local governments have participated in the use of red light camera enforcement of red light violations. Due to the Attorney General's advisory opinions, some local governments have used the cameras in pilot projects solely for data collection purposes or as a warning system to motorists, by sending a letter and attaching no penalty. Sarasota County, Manatee County, Palm Beach County, Polk County, and the cities of Orlando and Melbourne are examples of local governments that have at one time participated in a red light camera pilot project.

The City of Gulf Breeze was one of the first municipalities to pass an ordinance allowing use of red light cameras for enforcement purposes. It provided that a violation by any motor vehicle running a red light that is recorded by a traffic enforcement photographic system is a civil code violation<sup>9</sup> and a \$100 civil fee is assessed against the motor vehicle owner. The Gulf Breeze City Council adopted the ordinance despite the opinion issued by the Attorney General.

From 2008 to the present, approximately 50 municipalities have joined Gulf Breeze in enacting red light camera ordinances and placing cameras at intersections. The ordinances are broadly similar, and vary only in the amount of the fine (from \$50 to \$150, with some jurisdictions enacting multiple-offense increases up to \$500), the nature of required signage (none, at the entrance to the city, or at the intersection), whether or not to engage in education before "going live," the notice requirements sent to the motor vehicle owner, and the process whereby a motor vehicle owner may challenge the violation.

#### Recent Legal Proceedings

The controversy surrounding red light cameras has generated an increase in litigation over the past year. On July 30, 2009, a class action lawsuit was filed against the City of Temple Terrace for allowing American Traffic Solutions to operate a traffic camera program designed to generate \$3 million in annual revenue primarily from vehicles turning right on red lights. The lawsuit asserts that because the state legislature has consistently declined to allow automated ticketing, that the legal status of such systems has even been questioned by the leading photo enforcement vendor. The primary argument against Temple Terrace is that state law already covers the infraction of red light running and s. 316.007, F.S., does not allow municipalities to enact or enforce any ordinance on a matter covered by this chapter unless expressly authorized.

Most recently, in February of 2010, a Miami-Dade circuit judge ruled that the City of Aventura cannot use traffic cameras to issue fines under state law.<sup>10</sup> Plaintiffs successfully argued that the cities were using code violations to circumvent state law and that cities can only issue violations to red-light runners when an officer is present.

#### Federal Guidelines and Countermeasures

Currently there are no recognized independent standards or certifications for the red light camera industry. The Federal Highway Administration and the National Highway Traffic Safety Administration have only developed guidelines for use by state and local agencies. These guidelines were updated in January 2005.<sup>11</sup> Although not a regulatory requirement, the guidance is intended to provide critical information for state and local agencies on relevant aspects of red light camera systems in order to promote consistency and proper implementation and operation. The guidelines present research that suggests engineering improvements,<sup>12</sup> safety education and increased enforcement by law enforcement officers can significantly reduce red light violations.

<sup>9</sup> Section 18-113, Code of Ordinances, City of Gulf Breeze, Florida.

<sup>10</sup> A written order has yet to be released.

<sup>11</sup> U.S. Department of Transportation, *Red Light Camera Systems Operational Guidelines*, Publication No. FHWA-SA-05-002, January 2005.

<sup>12</sup> The suggested engineering improvements that have been recommended to reduce red light running include: improve signal head visibility by increasing size or adding signal heads; address signal interference from the sun by adding back plates to enhance

## Red Light Cameras

Traffic infraction detectors, or “red light cameras,” are used to enforce traffic laws by automatically photographing vehicles whose drivers run red lights. A red light camera is connected to the traffic signal and to sensors that monitor traffic flow at the crosswalk or stop line. The system continuously monitors the traffic signal, and the camera is triggered by any vehicle entering the intersection above a pre-set minimum speed and following a specified time after the signal has turned red. A second photograph typically shows the red light violator in the intersection. In some cases video cameras are used. Cameras record the license plate number, the date and time of day, the time elapsed since the beginning of the red signal, and the vehicle speed. Over 110 cities and towns in 20 states across the country currently participate in a red light camera program.<sup>13</sup> Red light cameras have been used in at least 33 foreign countries since the 1970s.<sup>14</sup>

## Studies Regarding Red Light Cameras

Numerous studies have been conducted regarding the impact of red light cameras on safety and the findings have been inconsistent. A 2003 Insurance Institute for Highway Safety review of international red light camera studies concluded that cameras reduce red light violations by 40 to 50 percent and also reduce injury crashes by 25 to 30 percent.<sup>15</sup> In contrast, a 2005 study of seven metropolitan area red light camera programs by the U.S. Federal Highway Administration concluded that there was a 25 percent reduction in right-angle collisions, but a 15 percent increase in rear-end collisions.<sup>16</sup> Increased rear-end crashes have been associated with red light cameras. Drivers have been observed stopping abruptly when approaching a monitored intersection to avoid triggering a ticket from a red light camera.

Evaluations of red light cameras have been conducted in Virginia,<sup>17</sup> Greensboro, North Carolina<sup>18</sup> and Ontario, Canada.<sup>19</sup> These evaluations were conducted over multiple years and data was gathered from intersections with and without red light cameras during the same time periods. The data showed that the intersections with cameras were associated with a significant increase in crashes. Rear-end crashes were a particular problem with many occurring as drivers attempt to stop abruptly before

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visibility; set appropriate yellow light time intervals that allow vehicles to clear the intersection or safely stop; add a brief all-red light clearance interval to allow traffic in the intersection to clear before cross traffic is released; add intersection warning signs, yellow flashing lights or reduce the approach speed to intersections; improve coordination of traffic signals to optimize traffic flow; remove on-street parking near intersections to increase visibility; and repair malfunctioning lights. See [http://safety.fhwa.dot.gov/intersection/redlight/rlr\\_report/rlrbook.pdf](http://safety.fhwa.dot.gov/intersection/redlight/rlr_report/rlrbook.pdf) (last visited March 13, 2010).

<sup>13</sup> National Campaign to Stop Red Light Running, <http://www.stopredlightrunning.com/index.html> (last visited March 13, 2010).

<sup>14</sup> Insurance Institute for Highway Safety website ([www.iihs.org/research/qanda/rlr.html](http://www.iihs.org/research/qanda/rlr.html)) citing Blackburn, R.R. and Glibert, D.T., *Photographic enforcement of traffic laws*. Washington, DC, National Academy Press, 1995.

<sup>15</sup> *Id.*, citing Retting, R.A. et al., *Effects of Red Light Cameras on Violations and Crashes: A Review of the International Literature*, *Traffic Injury Prevention* 4:17-23, 2003.

<sup>16</sup> *Safety Evaluation of Red-Light Cameras*, Federal Highway Administration, Publication No. FHWA-HRT-05-048, <http://www.tfhr.gov/safety/pubs/05048/>

<sup>17</sup> The evaluation in Virginia was conducted by the Virginia Transportation Research Council which analyzed red light camera operations in five jurisdictions utilizing seven years of data. The study concluded that the data “cannot be used to justify the widespread installation of cameras because they are not universally effective.” The study found that cameras were associated with:

- A significant increase (29 percent) in total crashes;
- A significant increase in injury crashes (18 percent), with the impact on injury severity reported as “too close to call”; and
- Increases in crash costs.

<sup>18</sup> The Greensboro evaluation was conducted by the Urban Transit Institute at the North Carolina Agricultural & Technical State University using 57 months of data. The study concluded that in many ways “the evidence points toward the installation of RLCs [red light cameras] as a detriment to safety.” This evaluation found that cameras were associated with:

- A significant increase (40 percent) in accident rates;
- A significant increase (40 to 50 percent) in possible injury crashes; and
- No decrease in severe crashes.

<sup>19</sup> The Ministry of Transportation in Ontario retained Synectics Transportation Consultants in 2003 to evaluate red light cameras in six jurisdictions. The findings showed that intersections with red light cameras had a:

- Sixteen percent increase in crashes, compared to an 8 percent increase at comparison intersections; and
- Two percent increase in injury or fatal crashes, compared to 10 percent and 12 percent decreases respectively at stepped-up police enforcement and comparison intersections.

entering the intersection. The studies also documented that intersections with cameras were associated with increased injury crashes or crashes with possible injuries.<sup>20</sup>

Other studies, including a 2004 U.S. Department of Transportation-funded study by the Urban Transit Institute at North Carolina Agriculture & Technical State University, suggests that there has been no demonstrable benefit from the red light camera program in terms of safety. In many ways, the evidence points toward the installation of red light cameras as a detriment to safety.<sup>21</sup>

### **Effect of Proposed Changes**

The bill prohibits the use of traffic infraction detectors and cameras by counties and municipalities to enforce traffic laws and preempts to the state the use of traffic infraction detectors to enforce traffic laws.

#### **B. SECTION DIRECTORY:**

**Section 1:** Creates s. 316.0082, F.S., prohibiting the use of traffic infraction detectors and cameras by counties and municipalities to enforce traffic laws and preempts to the state the use of traffic infraction detectors to enforce traffic laws.

**Section 2:** Provides that the bill is effective upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

This bill could have a negative fiscal impact on local governments that have entered into contracts with third parties involving the installation and operation of red light cameras. Depending on the terms of such contracts, local governments may have to pay damages if state law prohibits the use of red light cameras for the enforcement of traffic laws. Additionally, this bill could have a negative fiscal impact on those local governments who are currently generating revenues with such cameras through the collection of civil fees or fines.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Some local governments have contracted with private sector vendors to install and operate red light cameras and any such vendors may experience a loss of revenue. Also, there may be an economic impact on the private sector to remove such cameras.

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<sup>20</sup> *Red Light Running Cameras: Would Crashes, Injuries and Automobile Insurance Rates Increase if They are Used in Florida?* Florida Public Health Review, 2008; 5:1-7 at 2.

<sup>21</sup> *Id.* at 46

#### D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

It is uncertain whether this bill would create a mandate for local governments. There currently is legal uncertainty regarding the authority of local governments to operate red light cameras for the purpose of issuing fines for traffic violations under chapter 316, F.S.<sup>22</sup> If the use of such cameras is illegal then the bill would not create a local government mandate. On February 22, 2010, the Eleventh Circuit Court in Miami-Dade County ruled, in the case of *Richard Masone v. City of Aventura*,<sup>23</sup> that the City of Aventura could not use red light cameras to issue fines under chapter 316, F.S.<sup>24</sup> Inasmuch as this ruling is from a state circuit court the application of the ruling is jurisdictionally limited.

If it is judicially determined, however, that local governments have the authority to operate red light cameras for the purpose of issuing fines for traffic violations then this bill could create a mandate on local governments if the annual revenue loss exceeds the exempted \$1.9 million or some other exception or exemption. If the revenue loss exceeds \$1.9 million and the bill does not appear to qualify for another exemption or exception then the legislature must determine that the bill fulfills an important state interest and the bill must have a two-thirds vote of the membership of each house for passage.

##### 2. Other:

Article I, section 10 of the Florida Constitution provides, "No...law impairing the obligation of contracts shall be passed."<sup>25</sup> This bill provides a provision that may violate the constitutional prohibition against the impairment of contracts. The bill prohibits the use of traffic infraction detectors and cameras by counties and municipalities to enforce traffic laws. Some local governments have contracts with private sector providers the terms of which include the installation and operation of such cameras. If this bill becomes law the operation of those contracts may be affected.

The United States Supreme Court has expressed that, in a contract clause case, the first inquiry is whether the state law has, in effect, operated as a substantial impairment of a contractual relationship. The Court set forth a general correlation that the greater the severity of the impairment the higher the hurdle that must be cleared by state legislation.<sup>26</sup> State statutes that impair contractual obligations are, therefore, measured on a sliding scale of scrutiny. The degree of contractual impairment permitted is determined by the importance of the governmental interests advanced.

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<sup>22</sup> The authority of local government to use red light cameras to issue violations is unclear. There are numerous pending lawsuits on this issue and one circuit court has found the use of red light cameras to impose traffic fines illegal. "West Palm Beach attorney Jason Weisser [will] sue the city. It would be the lawyer's ninth such suit against cities throughout Florida using red-light cameras, including Orlando, Miami Gardens and Aventura." *Bradenton Facing Red-light Camera Lawsuit*, Bradenton Herald, August 25, 2009. See also, *Pembroke Pines Sued Over Red Light Cameras*, Sun-Sentinel, November 14, 2009 (A class-action suit with "roughly two dozen drivers," also represented by Weisser); *Lawsuit Filed Against City's Red-light Camera Program*, Tampa Tribune, Aug. 7, 2009 (driver suing Temple Terrace).

<sup>23</sup> Eleventh Judicial Circuit of Florida case number 2009-12736-CA-01.

<sup>24</sup> The court's ruling was oral and a written order has not yet been issued. The case was reported by the media including the following: *Red-Light Cameras in Aventura Get Stop Sign*, The Miami Herald, February 22, 2010.

<sup>25</sup> See also Art. I, Sec. 10, United States Constitution.

<sup>26</sup> *Allied Structural Steel Co. v. Spannaus*, 98 S.Ct. 2716 (1978).

The Florida Supreme Court enumerated several factors it might weigh when determining whether a contractual impairment is permitted:

1. Whether the law was enacted to deal with a broad economic or social problem;<sup>27</sup>
2. Whether the law operates in an area that was already subject to state regulation at the time the contract was entered into; and
3. Whether the effect on the contractual relationship is temporary; not severe, permanent, immediate, and retroactive.<sup>28</sup>

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Other Comments: Yellow Light Timing

An often overlooked but critical element in improving intersection safety is the time interval for the yellow light. The U.S. Department of Transportation, Federal Highway Administration, points out how dramatically the timing of the yellow light effects safety:

The purpose of the yellow interval is to warn approaching traffic of the imminent change in the assignment of right-of-way. The length of the yellow interval is determined in such a way that it provides enough time for a vehicle to travel at its prevailing speed through the intersection before the traffic signal turns red or to allow a driver to stop at a comfortable average deceleration before entering the intersection. Therefore, the likelihood of a motorist running a red light increases as the yellow interval is shortened. Lengthening the yellow interval, within appropriate guidelines, has been shown to significantly reduce the number of inadvertent red light violations. On the other hand too long of a yellow clearance interval decreases capacity of the intersection and increases delay to motorists. This in turn can cause driver frustration and may result in motorists entering the intersection later intentionally violating the red light.<sup>29</sup>

According to the U.S. Department of Transportation, the interval for the yellow light should be set in accordance with the Manual on Uniform Traffic Control Devices for Streets and Highways in conjunction with state and local agency policies.<sup>30</sup>

There have been reports on the subject of yellow light timing and red light camera revenues. Some describe situations where the duration of the yellow light interval was shortened in conjunction with the installation of red light cameras.<sup>31</sup>

Drafting Issues

The term "traffic infraction detector" is not defined in the bill or Florida Statutes. It is recommended that the bill be amended to include a definition.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

None.

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<sup>27</sup> *Yellow Cab Co. of Dade County v. Dade County*, 412 So.2d 395 (Fla. 3d DCA 1982).

<sup>28</sup> *Pompano v. Cladrige of Pompano Condominium, Inc.*, 378 So.2d 774 (Fla. 1980).

<sup>29</sup> [http://safety.fhwa.dot.gov/intersection/redlight/redl\\_faq.cfm](http://safety.fhwa.dot.gov/intersection/redlight/redl_faq.cfm) (last visited March 13, 2010).

<sup>30</sup> <http://mutcd.fhwa.dot.gov/pdfs/2003r1/pdf-index.htm> (last visited March 13, 2010).

<sup>31</sup> <http://www.thenewspaper.com/news/26/2650.asp> (last visited March 13, 2010).