

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 6007 Traffic Infraction Detectors
SPONSOR(S): Avila, Ingoglia and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 178, SB 630

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	13 Y, 1 N	Johnson	Vickers
2) Appropriations Committee	20 Y, 7 N	Cobb	Leznoff
3) Government Accountability Committee	16 Y, 3 N	Johnson	Williamson

SUMMARY ANALYSIS

The regulation and use of red light cameras for the purpose of enforcing the Florida Uniform Traffic Control law is preempted to the state. The Department of Highway Safety and Motor Vehicles (DHSMV), counties, and municipalities are authorized to employ red light camera programs.

Effective July 1, 2020, the bill removes the authorization for the DHSMV and local governments to install and maintain red light cameras. The bill maintains s. 316.0076, F.S., which expressly preempts to the state regulation of the use of cameras for enforcing the Florida Uniform Traffic Control law. This means local governments will no longer have the authority to implement red light camera programs by local ordinance.

The bill also makes conforming changes.

The bill has a negative recurring impact even though it does not take effect until 2020. This is because revenues are considered nonrecurring until the effective date, given the prospective repeal of the law. Therefore, although there is no immediate loss of revenue, the accounting of those revenues as being temporary or time limited occurs immediately. The Revenue Estimating Conference met on January 27, 2017, and estimated that the bill has a recurring annual impact of \$62.6 million to general revenue, \$12.0 million to state trust funds, and \$72.6 million to local government revenues.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Red Light Cameras, Generally

Traffic infraction detectors,¹ more commonly known as “red light cameras,” are used to document traffic law violations by automatically photographing vehicles whose drivers have failed to yield at red lights. The cameras are connected to the traffic signal and to sensors that monitor traffic flow at the crosswalk or stop line. The system photographs vehicles that enter the intersection above a pre-set minimum speed after the signal has turned red; a second photograph typically shows the vehicle in the intersection. In some cases, video cameras are used. Red light cameras also record the license plate number, date and time of day, time elapsed since the beginning of the red signal, and the vehicle’s speed.

Red Light Cameras in Florida

The regulation and use of red light cameras for the purpose of enforcing Ch. 316, F.S., which is the Florida Uniform Traffic Control Law, is preempted to the state.² The Department of Highway Safety and Motor Vehicles (DHSMV), counties, and municipalities are authorized to employ red light camera programs.³

Red light cameras are allowed on state roads if permitted by the Department of Transportation (DOT), and are allowed on streets and highways under the jurisdiction of counties or municipalities. However, the placement and installation of red light cameras on state roads, streets, and highways must meet placement and installation specifications developed by DOT.⁴

If DHSMV, a county, or a municipality installs a red light camera at an intersection, the respective governmental entity must notify the public that a camera is in use at that intersection, including specific notification of enforcement of right-on-red violations. The signage must meet specifications adopted by DOT pursuant to s. 316.0745, F.S.⁵

Notices and Citations

Current law allows DHSMV, a county, or a municipality to authorize a traffic infraction enforcement officer to issue a traffic citation for certain traffic infractions. If a red light camera captures an image of a vehicle running a red light, the visual information is reviewed by a traffic infraction enforcement officer. A notice of violation must be sent by first-class mail to the registered owner of the vehicle within 30 days of the alleged violation.⁶ The notice must specify the remedies available and must include a statement informing the owner of his or her right to review the photographic or video evidence upon which the violation is based, as well as the time and place or Internet location where the evidence may be reviewed.⁷

¹ Section 316.003(87), F.S., defines the term “traffic infraction detector” as a vehicle sensor installed to work in conjunction with a traffic control signal and a camera or cameras synchronized to automatically record two or more sequenced photographic or electronic images or streaming video of only the rear of a motor vehicle at the time the vehicle fails to stop behind the stop bar or clearly marked stop line when facing a traffic control signal steady red light. Any notification under s. 316.0083(1)(b), F.S., or traffic citation issued by the use of a traffic infraction detector must include a photograph or other recorded image showing both the license tag of the offending vehicle and the traffic control device being violated.

² Section 316.0076, F.S.

³ See s. 316.0083, F.S.

⁴ Section 316.0776(1), F.S.

⁵ Section 316.0776(2)(a), F.S.

⁶ Section 316.0083(1)(b)1.a., F.S.

⁷ Section 316.0083(1)(b)1.b., F.S.

Violations may not be issued if the vehicle is making a right-hand turn in a “careful and prudent manner”⁸ or if the vehicle comes to a complete stop⁹ before making a permissible right turn.

A person who receives a red light camera notice of violation may request a hearing within 60 days following the date of the notice or pay the penalty. No payment or fee may be required in order to receive the hearing.¹⁰ If a person elects to receive a hearing, the person waives his or her right to challenge delivery of the notice of violation.¹¹ If the notice of violation is upheld, the local hearing officer must require the petitioner to pay the \$158 penalty and may also require the petitioner to pay county or municipal costs, not to exceed \$250.¹²

If the registered owner of the vehicle does not pay the violation within 60 days following the date of notification, the traffic infraction enforcement officer must issue a uniform traffic citation (UTC) to the owner. The UTC must be sent by certified mail and, like the notice of violation, it must include the same statements described above regarding review of the photographic or video evidence.¹³

The images provided by a red light camera are admissible in court and provide a rebuttable presumption the vehicle was used to commit the violation.¹⁴

A traffic infraction enforcement officer must provide by electronic transmission a replica of the citation data to the court having jurisdiction over the alleged offense or its traffic violations bureau within five days after the issuance date of a UTC to the violator.¹⁵

Defenses

The registered owner of the motor vehicle involved in a red light camera violation is responsible for paying the UTC unless the owner can establish that the:

- Motor vehicle passed through the intersection in order to yield right-of-way to an emergency vehicle or as part of a funeral procession;
- Motor vehicle passed through the intersection at the direction of a law enforcement officer;
- Motor vehicle was, at the time of the violation, in the care, custody, or control of another person;
- Driver received a UTC issued by a law enforcement officer for the alleged violation; or
- Motor vehicle's owner was deceased on or before the date that the UTC was issued.¹⁶

Current law provides certain requirements that must be met when establishing one of the defenses, including furnishing an affidavit to the appropriate governmental entity that provides detailed information supporting the defense.¹⁷

Penalties

Red light camera citations carry a \$158 penalty. When the \$158 penalty is the result of local government enforcement, \$75 is retained by the local government and \$83 is deposited with the Department of Revenue (DOR). DOR subsequently distributes the penalty by depositing \$70 in the General Revenue Fund, \$10 in the Department of Health (DOH) Administrative Trust Fund, and \$3 in the Brain and Spinal Cord Injury Trust Fund.¹⁸

⁸ Section 316.0083(2), F.S.

⁹ Section 316.0083(1)(a), F.S.

¹⁰ Section 316.0083(1)(b)1.c., F.S.

¹¹ Section 316.0083(1)(b)1.d., F.S.

¹² Sections 316.0083(5)(e) and 318.18(22), F.S.

¹³ Section 316.0083(1)(c), F.S.

¹⁴ Section 316.0083(1)(e), F.S.

¹⁵ Section 316.650(3)(c), F.S.

¹⁶ Section 316.0083(1)(d), F.S.

¹⁷ *Id.*

¹⁸ Sections 316.0083(1)(b)3. and 318.18(15), F.S.

When the \$158 penalty is the result of enforcement by DHSMV, \$45 is retained by the local government and \$113 is deposited with DOR.¹⁹ DOR subsequently distributes the penalty by depositing \$100 in the General Revenue Fund, \$10 in the DOH Administrative Trust Fund, and \$3 in the Brain and Spinal Cord Injury Trust Fund.²⁰ DHSMV does not currently operate any red light cameras.

If a law enforcement officer cites a motorist for the same offense, the penalty is still \$158, but the revenue is distributed from the clerk of court to DOR, where \$30 is distributed to the General Revenue Fund, \$65 is distributed to the DOH Administrative Trust Fund, and \$3 is distributed to the Brain and Spinal Cord Injury Trust Fund. The remaining \$60 is distributed in small percentages to a number of funds pursuant to s. 318.21, F.S.²¹

Red light camera citations may not result in points assessed against the driver's driver license and may not be used for the purpose of setting motor vehicle insurance rates.²²

Proceeds Retained by Local Government

Local governments contract with a vendor to provide red light camera services. The contract term generally ranges from three to five years.²³ Local governments typically pay between \$4,250 and \$4,750 per camera, per month.²⁴

In a survey of local governments that operate a red light camera program, the Office of Program Policy Analysis & Governmental Accountability (OPPAGA) reported that, over a three-year period: 49 percent of the total money collected was used to pay red light camera vendors; 78 percent reported excess revenue after payments to vendors and other program expenses; and 16 percent reported difficulty generating sufficient revenue to make vendor payments and as such, had accrued outstanding balances. Of those respondents reporting excess revenue, 76 percent was allocated to general fund, 14 percent to public safety/police, and 5 percent to road repair/maintenance.²⁵

2016 Red Light Camera Program Analysis

Current law requires each county or municipality operating a red light camera program to annually self-report data to DHSMV, which includes red light camera program results over the preceding fiscal year, the procedures for enforcement, and other statistical data and information required by DHSMV.²⁶ DHSMV must compile the information and submit a summary report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.²⁷

In December 2016, DHSMV issued its report for the period between July 1, 2015, and June 30, 2016. According to the 2016 report, 59 jurisdictions responded that they had red light cameras in operation; 688 red light cameras were active, which was a reduction of 108 cameras from the previous year; and 430 intersections were equipped with red light cameras, which was a reduction of 48 from the previous year. Agencies issued 1,227,927 notices of violation and of the notices issued, 62 percent paid the fine and approximately 3.5 percent were contested and dismissed. Of those responding, 71 percent indicated they issue notices of violation for a right-on-red violation and 32 percent indicated they do not issue such notices. Six jurisdictions indicated they do not track the number of violations issued for right turns on red.²⁸

¹⁹ *Id.*

²⁰ *Id.*

²¹ Section 318.18(15), F.S.

²² Section 322.27(3)(d)6., F.S.

²³ OPPAGA Research Memorandum, *Florida Red Light Camera Programs*, (January 31, 2014) (Copy on file with the Transportation & Infrastructure Subcommittee).

²⁴ *Id.*

²⁵ *Id.*

²⁶ Section 316.0083(4), F.S. DHSMV uses an on-line questionnaire to facilitate data collection.

²⁷ *Id.*

²⁸ DHSMV Red Light Camera Report, December 31, 2016 (Copy on file with the Transportation & Infrastructure Subcommittee).

In its 2016 report, DHSMV provided the following breakdown of the number of crashes at red light camera (RLC) intersections before and after the cameras were installed:²⁹

Crash	Before RLC Installed	After RLC Installed	Percentage Change
Total Crashes	5,107	5,625	10.14%
Angle Crashes	1,383	1,476	6.72%
Rear-End Crashes	3,724	4,149	11.41%
Non-Incapacitating Injuries	399	392	-1.75%
Incapacitating Injuries	153	194	26.80%
Fatal Crashes	5	10	100%
Crashes Involving Non-Motorists	56	45	-19.64%
Crashes Involving Running a Red Light	191	185	-3.14%
Possible Injury Crashes	964	1,054	9.34%

Litigation

In October 2014, the Fourth District Court of Appeal dismissed a red light camera citation after finding that the local government had delegated an impermissible measure of discretion and control over its red light camera program to a private third-party vendor.³⁰ Under the terms of the contract, the vendor decided which infractions would be reviewed by the city, obtained the information needed to fill out a citation, completed the citation, issued the citation, and transmitted the citation information to the court.³¹ In Florida, only traffic infraction enforcement officers and sworn law enforcement officers are authorized to issue a traffic citation.³² The case was appealed; however, the Florida Supreme Court declined to accept jurisdiction on the case.³³

In July 2016, the Third District Court of Appeal determined that Florida law allows a vendor, as the municipality's agent, to review and sort red light camera images to forward to a law enforcement officer when:

- The vendor's decisions are strictly circumstanced by contract language, municipal guidelines, and actual practice;
- Ministerial decisions are further limited by automatically passing close calls to the police for review;
- The law enforcement officer makes the actual decision as to whether probable cause exists and whether a notice and citation should be issued; and
- The officer's decision that probable cause exists and the citation issued consists of a full, professional review by an identified officer who is responsible for that decision and does not merely acquiesce to any decision by the vendor.³⁴

In its decision, the Third District Court of Appeal distinguished its decision from that of the Fourth District Court of Appeal and certified the following three questions to the Florida Supreme Court regarding the legality of red light camera programs in Florida:

1. Does the review of red light camera images authorized by s. 316.0083(1)(a), F.S. (2014), allow a municipality's vendor, as its agent, to sort images to forward to the law enforcement officer, where the controlling contract and city guidelines limit the vendor to deciding whether the images contain certain easy-to-identify characteristics and where only the law enforcement officer makes the determination whether probable cause exists and whether to issue a Notice of Violation and citation?

²⁹ It should be noted that other factors may have contributed to the number of crashes.

³⁰ *City of Hollywood v. Arem*, 39 Fla. L. Weekly D2175 (Fla. 4th DCA October 15, 2014).

³¹ *Id.*

³² Sections 316.0083(1)(b)3. and 316.650(3)(c), F.S.

³³ Supreme Court of Florida, *City of Hollywood v. Arem*, Case No. SC15-236. Order Issued April 13, 2015.

³⁴ *State of Florida, by and through the City of Aventura, et.al. v. Jimenez*, Case Nos. 3D15-2303 & 3D15-2271, Opinion filed July 27, 2016.

2. Is it an illegal delegation of police power for the vendor to print and mail the notices and citations, through a totally automated process without human involvement, after the law enforcement officer makes the determination that probable cause exists and to issue a Notice of Violation and citation?
3. Does the fact that citation data is electronically transmitted to the Clerk of the Court from the vendor's server via a totally automated process without human involvement violate s. 316.650(3)(c), F.S., (2014), when it is the law enforcement officer who affirmatively authorizes the transmission process?

The Florida Supreme Court has not issued an opinion regarding the above questions.³⁵

In October 2016, the Second District Court of Appeal issued a decision that generally agreed with that of the Third District Court of Appeal.³⁶

Proposed Changes

Effective July 1, 2020, the bill removes DHSMV and local government authorization to install and maintain red light cameras. The bill maintains s. 316.0076, F.S., which expressly preempts to the state regulation of the use of cameras for enforcing Ch. 316, F.S. This means local governments will not have the authority to implement red light camera programs by local ordinance.

Because the bill removes the authority of DHSMV and local governments to install and maintain red light cameras, it makes the following changes:

- Repeals the statutory definitions of “traffic infraction detector” and “local hearing officer.”
- Repeals s. 316.0083, F.S., which is the Mark Wandall Traffic Safety Program.
- Repeals s. 316.00831, F.S., which provides for the distribution of penalties collected under s. 316.0083(1)(b), F.S.
- Repeals s. 316.07456, F.S., which provides the transitional implementation for red light cameras.
- Repeals s. 316.0776, F.S., which relates to the placement and installation of red light cameras.
- Repeals s. 318.15(3), F.S., which establishes penalties associated with the failure to pay red light camera fines.
- Removes DHSMV's authority to designate employees as traffic infraction enforcement officers for purposes of enforcing red light camera violations.
- Removes provisions regarding traffic citations issued pursuant to a red light camera violation.
- Removes provisions related to penalties associated with red light camera violations.
- Repeals s. 318.18(22), F.S., relating to the payment of county and municipal costs.
- Removes provisions regarding points and insurance rates related to red light camera violations.
- Conforms cross-references.

B. SECTION DIRECTORY:

Section 1 repeals ss. 316.0083(35) and (87), F.S., defining “local hearing officer” and “traffic infraction detector.”

Section 2 repeals s. 316.008(8), F.S., authorizing municipalities and counties to use traffic infraction detectors.

Section 3 repeals s. 316.0083, F.S., relating to the Mark Wandall Traffic Safety Program.

Section 4 repeals s. 316.00831, F.S., relating to the distribution of penalties collected under the Mark Wandall Traffic Safety Program.

Section 5 repeals s. 316.07456, F.S., relating to transitional implementation.

³⁵ Florida Supreme Court Case No. SC16-1976.

³⁶ *City of Oldsmar and Pamela Jo Bondi, Attorney General v. Trinh*, Case No. 2D15-4898, Opinion filed October 28, 2016.

Section 6 repeals s. 316.0776, F.S., relating to the placement and installation of traffic infraction detectors.

Section 7 repeals s. 318.15(3), F.S., relating to failure to comply with a civil penalty or to appear.

Section 8 repeals s. 321.50, F.S., relating to the authorization for DHSMV to use traffic infraction detectors.

Sections 9 through 12 amend ss. 28.37, 316.003, 316.545, and 316.613, F.S., to conform cross-references.

Section 13 amends s. 316.640, F.S., relating to the enforcement of traffic laws.

Section 14 amends s. 316.640, F.S., relating to traffic citations.

Sections 15 and 16 amend ss. 318.121 and 318.14, F.S., to conform cross-references.

Section 17 amends s. 318.18, F.S., relating to the amount of penalties for traffic infractions.

Section 18 amends s. 320.03, F.S., to conform a cross-reference.

Section 19 amends s. 322.27, F.S., relating to DHSMV's authority to suspend or revoke a driver license or identification card.

Section 20 amends s. 655.960, F.S., to conform a cross-reference.

Section 21 provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

On January 27, 2017, the Revenue Estimating Conference reviewed the bill. The consensus estimate for that bill was that it would result in the following negative recurring fiscal impact to state government revenues:

Fiscal Year	General Revenue	Trust Funds	Total
2017-2018	\$62.6 million	\$12.0 million	\$74.6 million
2018-2019	\$63.6 million	\$12.2 million	\$75.8 million
2019-2020	\$64.6 million	\$12.4 million	\$77.0 million
2020-2021	\$65.6 million	\$12.5 million	\$78.1 million
2021-2022	\$66.5 million	\$12.7 million	\$79.2 million

2. Expenditures:

DOR will no longer incur expenses associated with processing the payments from municipalities and counties and distributing the monies to the appropriate funds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

On January 27, 2017, the Revenue Estimating Conference reviewed the bill. The consensus estimate was that the bill would result in the following negative recurring fiscal impact to local government revenues:

Fiscal Year	Revenue
2017-2018	\$72.6 million
2018-2019	\$73.8 million
2019-2020	\$75.0 million
2020-2021	\$76.1 million
2021-2022	\$77.1 million

2. Expenditures:

Municipalities and counties will no longer incur expenses associated with red light cameras; however, they may incur some expenses associated with removing existing cameras.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill removes the possibility of motor vehicle operators being issued a \$158 fine for a red light camera violation.

Each jurisdiction operating red light cameras has a unique contract with a vendor to provide some, if not all, of the following services: installation, maintenance, monitoring, and citation issuance. The value of these contracts and the specific stakeholders are not clear at this time, but the impact will be significant.³⁷

D. FISCAL COMMENTS:

The bill has a negative recurring impact even though it does not take effect until 2020. This is because revenues are considered nonrecurring until the effective date, given the prospective repeal of the law. Therefore, although there is no immediate loss of revenue, the accounting of those revenues as being temporary or time limited occurs immediately. The Revenue Estimating Conference met on January 27, 2017, and estimated that the bill has a recurring annual impact of \$62.6 million to general revenue, \$12.0 million to state trust funds, and \$72.6 million to local government revenues.

According to DHSMV, the bill would eliminate the annual survey, annual red light camera report, and vendor approval process for the issuance of red light camera notices of violation. Also, it would alleviate the workload related to handling red light camera disputes and for granting access and registration stops.³⁸

The bill eliminates the need for hearings to dispute the issuance of red light camera notices of violation, which should result in a reduction in court costs.³⁹

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

³⁷ DHSMV bill analysis of HB 4027 (2016), which removed the authorization for DHSMV and local governments to install red light cameras.

³⁸ *Id.*

³⁹ *Id.*

Municipalities or counties may have contracts that provide for the use of red light cameras beyond July 1, 2020. To the extent that these contracts do not contain provisions regarding the termination of the contract if authorization for such cameras is repealed, the bill could raise concerns regarding impairment of contracts. According to a 2014 research memorandum by OPPAGA, the duration of red light camera contracts is typically three to five years with the option to extend for an additional term. Often a provision in the contract authorizes termination in the event the law regarding red light cameras changes.⁴⁰

B. RULE-MAKING AUTHORITY:

DHSMV indicates that the bill will require it to change some of its procedures.⁴¹

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

⁴⁰ OPPAGA Research Memorandum, *Florida Red Light Camera Program*, February 7, 2014.

⁴¹ DHSMV Bill Analysis HB 4027 (2016).