

The Senate Public Safety Committee offered the following substitute to HB 77:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and
2 traffic, so as to require a permit from the Department of Transportation for the use of a
3 traffic-control signal monitoring device; to provide for review of permits by the department;
4 to provide for use of a certified peace officer to swear to a traffic light violation; to provide
5 a definition; to provide for an engineering study; to provide for changing timing of the
6 intersection clearance interval; to provide for reports to the Department of Transportation;
7 to provide for disposition of funds collected through use of traffic-control signal monitoring
8 devices; to provide for an administrative review of denied, suspended, or revoked permits;
9 to provide for related matters; to provide for an effective date; to repeal conflicting laws; and
10 for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

12 Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is
13 amended by revising paragraph (3) of subsection (f) of Code Section 40-6-20, relating to
14 enforcement by traffic-control signal monitoring devices, as follows:
15

16 "(3) For the purpose of enforcement pursuant to this subsection:

17 (A) The driver of a motor vehicle shall be liable for a civil monetary penalty of not
18 more than \$70.00 if such vehicle is found, as evidenced by recorded images produced
19 by a traffic-control signal monitoring device, to have been operated in disregard or
20 disobedience of a CIRCULAR RED or RED ARROW signal in violation of subsection
21 (a) of this Code section and such disregard or disobedience was not otherwise
22 authorized by law;

23 (B) The law enforcement agency authorized to enforce the provisions of this Code
24 section for which such device is permitted shall send by first-class mail addressed to the
25 owner of the motor vehicle postmarked not later than ten days after the date of the
26 alleged violation:

1 (i) A citation for the alleged violation, which shall include the date and time of the
 2 violation, the location of the intersection, the amount of the civil monetary penalty
 3 imposed, and the date by which the civil monetary penalty shall be paid;

4 (ii) A copy of the recorded image;

5 (iii) A copy of a certificate sworn to or affirmed by a ~~trained law enforcement~~
 6 certified peace officer ~~or a technician~~ employed by a law enforcement agency for
 7 ~~which such device is authorized to enforce this Code section~~ and stating that, based
 8 upon inspection of recorded images, the owner's motor vehicle was operated in
 9 disregard or disobedience of a CIRCULAR RED or RED ARROW signal in violation
 10 of subsection (a) of this Code section and that such disregard or disobedience was not
 11 otherwise authorized by law;

12 (iv) A statement of the inference provided by subparagraph (D) of this paragraph and
 13 of the means specified therein by which such inference may be rebutted;

14 (v) Information advising the owner of the motor vehicle of the manner and time in
 15 which liability as alleged in the citation may be contested in court; and

16 (vi) Warning that failure to pay the civil monetary penalty or to contest liability in a
 17 timely manner shall waive any right to contest liability and result in a civil monetary
 18 penalty;

19 provided, however, that only warning notices and not citations for violations shall be
 20 sent during the 30 day period commencing with the installation of a traffic-control
 21 signal monitoring device at such location;

22 (C) Proof that a motor vehicle was operated in disregard or disobedience of a
 23 CIRCULAR RED or RED ARROW signal in violation of subsection (a) of this Code
 24 section shall be evidenced by recorded images produced by a traffic-control signal
 25 monitoring device authorized pursuant to Article 3 of Chapter 14 of this title. A copy
 26 of a certificate sworn to or affirmed by a ~~trained law enforcement~~ certified peace officer
 27 ~~or a technician~~ employed by a law enforcement agency ~~for which such device is~~
 28 ~~authorized~~ and stating that, based upon inspection of recorded images, a motor vehicle
 29 was operated in disregard or disobedience of a CIRCULAR RED or RED ARROW
 30 signal in violation of subsection (a) of this Code section and that such disregard or
 31 disobedience was not otherwise authorized by law shall be prima-facie evidence of the
 32 facts contained therein; and

33 (D) Liability under this subsection shall be determined based upon preponderance of
 34 the evidence. Prima-facie evidence that the vehicle described in the citation issued
 35 pursuant to this subsection was operated in violation of subsection (a) of this Code
 36 section, together with proof that the defendant was at the time of such violation the
 37 registered owner of the vehicle, shall permit the trier of fact in its discretion to infer that

1 such owner of the vehicle was the driver of the vehicle at the time of the alleged
2 violation. Such an inference may be rebutted if the owner of the vehicle:

- 3 (i) Testifies under oath in open court that he or she was not the operator of the vehicle
4 at the time of the alleged violation;
- 5 (ii) Presents to the court prior to the return date established on the citation a certified
6 copy of a police report showing that the vehicle had been reported to the police as
7 stolen prior to the time of the alleged violation; or
- 8 (iii) Submits to the court prior to the return date established on the citation a sworn
9 notarized statement identifying the name of the operator of the vehicle at the time of
10 the alleged violation."

11 SECTION 2.

12 Said title is further amended by revising paragraph (8) of subsection (f) of Code Section
13 40-6-20, relating to enforcement by traffic-control signal monitoring devices, as follows:

14 ~~"(8) The provisions of this subsection shall not limit law enforcement agencies to the use
15 of traffic-control signal monitoring devices in enforcing subsection (a) of this Code
16 section; and, when there is evidence obtained from another source or sources which
17 constitutes a prima-facie case of a violation of subsection (a) of this Code section, such
18 violation may be prosecuted as otherwise provided by law in lieu of, but not in addition
19 to, enforcement under this subsection. A governing authority shall not impose a civil
20 penalty under this subsection on the owner of a motor vehicle if the operator of the
21 vehicle was arrested or issued a citation and notice to appear by a peace officer for the
22 same violation that is recorded by a traffic-control signal monitoring device."~~

23 SECTION 3.

24 Said title is further amended by revising Code Section 40-14-20, relating to definitions for
25 the use of traffic-control signal monitoring devices, by redesignating paragraphs (1) and (2)
26 as paragraphs (2) and (3) and adding a new paragraph (1) as follows:

27 "(1) 'Governing authority' means any county, municipality, or consolidated government."

28 SECTION 4.

29 Said title is further amended by revising Code Section 40-14-21, relating to the use of
30 traffic-control signal monitoring devices, as follows:

31 "40-14-21.

32 (a) A governing authority must obtain an operating permit from the Department of
33 Transportation prior to using any traffic-control signal monitoring device. The law
34 enforcement agency of any county or municipality governing authority shall not use

1 traffic-control signal monitoring devices unless the chief law enforcement officer of such
2 ~~county or municipality~~ governing authority desires the use of such devices and such use is
3 approved by a properly adopted resolution of the governing authority.

4 (b) The governing authority of the county or municipality shall also conduct a public
5 hearing on the proposed use of such devices prior to entering any contract on or after July
6 1, 2001, for the use or purchase of such devices.

7 (c) The Department of Transportation is authorized to prescribe by appropriate rules and
8 regulations the manner and procedure in which applications shall be made for
9 traffic-control signal monitoring device permits and to prescribe the required information
10 to be submitted by an applicant consistent with the requirements of this title. The
11 Department of Transportation may deny an application or suspend or revoke a permit for
12 failure of the governing authority to provide requested information or documentation or for
13 any other violation of this article or violation of the rules and regulations of the department.

14 (d) An application for the operation of a traffic-control signal monitoring device by a
15 governing authority shall name the intersection at which the device is to be used and
16 provide demonstrable evidence that there is a genuine safety need for the use of such
17 device at the designated intersection. The genuine safety need for each designated
18 intersection shall be approved by the Department of Transportation in accordance with
19 nationally recognized safety standards. For each designated intersection, the governing
20 authority shall conduct a traffic engineering study to determine whether, in addition to or
21 as an alternative to the traffic-control signal monitoring device, there are other possible
22 design changes likely to reduce the number of accidents or red light violations at that
23 intersection. This report shall be submitted with the application for an operation permit
24 required under these provisions and any request to amend the operation permit to include
25 an additional intersection.

26 (e) The revenue generated by the use of a traffic-control signal monitoring device shall not
27 be considered when determining whether to issue a permit for the operation of such devices
28 at a designated intersection. The only consideration shall be the increased life-saving
29 safety value by the use of such a device at the designated intersection.

30 (f) Permits shall be issued by the Department of Transportation within three months of
31 receiving a completed permit application from a governing authority where such governing
32 authority is otherwise in compliance with the provisions of this article. An application for
33 amendment to an existing permit and an application for a renewal permit following a
34 suspension or revocation of a permit shall also be processed within three months of receipt
35 of such application, provided that the application is complete and complies with the
36 provisions of this article. A permit shall authorize use of a traffic-control signal monitoring

1 device for only those designated intersections approved as having a genuine life-saving
 2 safety need by the Department of Transportation.

3 (g) No ~~county or municipal~~ governing authority shall be authorized to use traffic-control
 4 signal monitoring devices where any arresting officer or official of the court having
 5 jurisdiction of traffic cases is paid on a fee system. This subsection shall not apply to any
 6 official receiving a recording fee.

7 (e)(h) If a ~~county or municipality~~ governing authority elects to use traffic-control signal
 8 monitoring devices, no portion of any civil monetary penalty collected through the use
 9 of such devices may be paid to the manufacturer or vendor of the traffic-control signal
 10 monitoring devices. The compensation paid by the ~~county or municipality~~ governing
 11 authority for such devices shall be based on the value of such equipment and shall not be
 12 based on the number of citations issued or the revenue generated by such devices.

13 ~~(d)(1)(i)~~ A Charges for violations based on evidence obtained from a traffic-control signal
 14 monitoring device shall not be ~~used~~ made by a law enforcement agency unless the law
 15 enforcement agency employs at least one full-time certified peace officer.

16 ~~(2)~~ Failure of a law enforcement agency to continue to meet the standards provided by
 17 this subsection shall cause such agency to be ineligible to use traffic-control signal
 18 monitoring devices.

19 ~~(e)(j)~~ A traffic-control signal monitoring device shall not be used to produce any
 20 photograph, microphotograph, electronic image, or videotape showing the identity of any
 21 person in a motor vehicle.

22 (k) A governing authority utilizing traffic-control signal monitoring devices shall at all
 23 times cooperate fully with the Department of Transportation. The department is
 24 authorized, at any time, to inspect traffic-control signal monitoring devices used by a
 25 governing authority and any records pertaining to revenues collected from the use of such
 26 devices.

27 (l) A permit may be amended at any time by amended application submitted by a
 28 governing authority. The request to amend an application and to add a new intersection to
 29 the list of authorized intersections for the operation of a traffic-control signal monitoring
 30 device shall be considered by the department in the same manner as original permit
 31 applications.

32 (m) A permit shall be reviewed by the Department of Transportation once every three
 33 years from the date of issuance or date of the most recent extension unless the permit has
 34 been revoked or suspended by the department. The review shall be conducted in the same
 35 manner as the original permit application.

1 (n) The department is authorized to set reasonable application fees to compensate the
 2 department for necessary costs in issuing, amending, or reviewing a permit to operate
 3 traffic-control signal monitoring devices.

4 (o) Any governing authority operating a traffic-control signal monitoring device on
 5 December 31, 2008, shall have until January 1, 2010, to obtain a permit for the operation
 6 of such device as required by this Code section."

7 SECTION 5.

8 Said title is further amended by revising Code Section 40-14-22, relating to timing of
 9 traffic-control signals, as follows:

10 "40-14-22.

11 The timing of any traffic-control signal which is being monitored by a traffic-control signal
 12 monitoring device shall conform to regulations promulgated by the Department of
 13 Transportation pursuant to Code Section 32-6-50. The duration of the yellow or red light
 14 of any traffic-control device at which a traffic-control signal monitoring device is installed
 15 shall not be decreased prior to the installation of a device or during the time for which the
 16 device is operated. Each ~~county or municipal law enforcement agency~~ governing authority
 17 using a traffic-control signal monitoring device shall at its own expense test the device for
 18 accuracy at regular intervals and record and maintain the results of each test. Such test
 19 results shall be public records subject to inspection as provided by Article 4 of Chapter 18
 20 of Title 50. Each such test shall be made in accordance with the manufacturer's
 21 recommended procedure. Any such device not meeting the manufacturer's minimum
 22 accuracy requirements shall be removed from service and thereafter shall not be used by
 23 the ~~county or municipal~~ governing authority, nor shall any charges for violations based on
 24 evidence from such device be made by a law enforcement agency, until it such device has
 25 been serviced and calibrated at the expense of the ~~law enforcement agency~~ governing
 26 authority by a qualified technician."

27 SECTION 6.

28 Said title is further amended by revising Code Section 40-14-23, relating to signs to notify
 29 motorists of use of traffic-control signal monitoring devices, as follows:

30 "40-14-23.

31 Each ~~county or municipality~~ governing authority using traffic-control signal monitoring
 32 devices shall erect signs on every highway which comprises a part of the state highway
 33 system at that point on the highway which intersects the jurisdictional limits of the ~~county~~
 34 ~~or municipality~~ governing authority. A sign shall be erected also by such entity on each
 35 public road on the approach to the next traffic-control signal for such road when a

1 traffic-control signal monitoring device is monitoring such next signal for such road and
 2 signs shall also be erected at any other location required by the Department of
 3 Transportation. Such signs shall be ~~at least 30 inches by 30 inches in measurement and~~
 4 ~~shall warn approaching motorists that traffic-control signal monitoring devices are being~~
 5 ~~employed~~ of a design specified by the Department of Transportation in accordance with
 6 nationally recognized standards."

7 SECTION 7.

8 Said title is further amended by revising Code Section 40-14-24, relating to reports regarding
 9 use of traffic-control signal monitoring devices, as follows:

10 "40-14-24.

11 (a) Each county or municipality governing authority using any traffic-control signal
 12 monitoring device shall submit not later than February 1 of each year a report on such use
 13 during the preceding calendar year to the ~~Governor, the Lieutenant Governor, and the~~
 14 ~~Speaker of the House of Representatives~~ Department of Transportation. Such report shall
 15 include, without limitation:

- 16 (1) A description of the locations where traffic-control signal monitoring devices were
 17 used;
- 18 (2) The number of violations recorded at each location and in the aggregate on a monthly
 19 basis;
- 20 (3) The total number of citations issued;
- 21 (4) The number of civil monetary penalties and total amount of such penalties paid after
 22 citation without contest;
- 23 (5) The number of violations adjudicated and results of such adjudications, including a
 24 breakdown of dispositions made;
- 25 (6) The total amount of civil monetary penalties paid; and
- 26 (7) The quality of the adjudication process and its results.

27 (b) If any governing authority fails to provide the report provided for in subsection (a) of
 28 this Code section all revenues generated from the operation of any traffic-control signal
 29 monitoring device from the date the report was due shall be forwarded to the general fund
 30 of the state. The governing authority shall not be entitled to retain any revenue until the
 31 annual report is filed and accepted by the Department of Transportation.

32 (c) The Department of Transportation shall forward copies of all reports to the offices of
 33 the Governor, Lieutenant Governor, and the Speaker of the House by March 1 of each year.
 34 The department shall also forward to the offices of the Governor, Lieutenant Governor, and
 35 the Speaker of the House a complete list of all traffic-control signal monitoring devices
 36 currently in use."

SECTION 8.

Said title is further amended by adding at the end of Article 3 of Chapter 14, relating to traffic-control signal monitoring devices, new Code sections to read as follows:

"40-14-25.

(a) Complaints surrounding the use and operation of traffic-control signal monitoring devices by governing authorities, including the use by a governing authority for any purpose other than the promotion of the public health, welfare, and safety or in a manner which violates this article or violates its operating permit, may be made to the commissioner of transportation. The commissioner or the commissioner's designee is authorized to conduct an investigation into the acts and practices of the governing authority with respect to the use of traffic-control signal monitoring devices. If, as a result of this investigation, there is evidence to substantiate a violation of this article or the rules and regulations of the Department of Transportation, the department may take any action deemed necessary to prevent further misconduct or violations, including denying an application for a permit or suspension or revocation of a permit.

(b) There shall be a rebuttable presumption that a governing authority is using traffic-control signal monitoring devices for purposes other than the promotion of the public health, welfare, and safety if such devices are used by a governing authority without a valid permit issued by the Department of Transportation or in violation of any requirement of this article or the rules and regulations of the department.

(c) Where a violation of this article by a governing authority or any law enforcement agency enforcing the use of traffic-control signal monitoring devices on behalf of such governing authority is substantiated, the Department of Transportation may order that revenues generated from the use of traffic-control signal monitoring devices during the time of such violation or misconduct shall be remitted to the state's general fund. The department's order to remit funds shall be a continuous order until the violation is corrected by the governing authority as determined by the department. Any governing authority failing to abide by such order shall be liable for interest and costs, including reasonable attorneys fees, incurred in the enforcement of the order. Jurisdiction for enforcing the department's order shall be in the Superior Court of Fulton County.

40-14-26.

(a) Upon issuance by the commissioner of transportation of an order denying an application for or suspending or revoking a traffic-control signal monitoring device permit, the governing authority affected shall be afforded a hearing, to be held within 30 days of the effective date of the order. The hearing shall be held before the commissioner of the department or his or her designee, and, within 30 days following the hearing, the governing

1 authority affected shall be served with a written decision announcing whether the permit
2 shall remain denied, suspended, or revoked or whether it shall be granted or reinstated.

3 (b) Only after the expiration of three years following the revocation of a traffic-control
4 signal monitoring device permit, shall the governing authority make application, upon a
5 change of circumstances being shown, to the commissioner of transportation for a
6 reconsideration of whether the governing authority should be permitted to use
7 traffic-control signal monitoring devices."

8 **SECTION 9.**

9 This Act shall become effective December 31, 2008.

10 **SECTION 10.**

11 All laws and parts of laws in conflict with this Act are repealed.