

# Legislative Analysis



## AUTOMATED TRAFFIC ENFORCEMENT

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### House Bill 4763

Sponsor: Rep. Wayne Schmidt

### House Bill 4762

Sponsor: Rep. Thomas F. Stallworth III

Committee: Transportation and Infrastructure

Complete to 6-3-13

## A SUMMARY OF HOUSE BILLS 4762 AND 4763 AS INTRODUCED 5-22-13

### ***BRIEF SUMMARY:***

House Bill 4763 would amend the Michigan Vehicle Code to allow a local unit of government to operate an automated traffic safety device enforcement program and regulate the use of such devices. Under the bill, a local unit of government would be a county, city, village, or township, or a state university or college; the enforcement program would be established by local ordinance or resolution.

An automated traffic enforcement safety device would be defined in the bill as a device that (1) is capable of producing a photographically recorded still or video image of the rear of a motor vehicle, or the rear of a motor vehicle being towed by another motor vehicle, including an image of the vehicle's rear license plate; and (2) indicates on one or more of the images produced the date, time, and location of the violation and the intersection traffic control signal.

Under the bill, the owner of the vehicle commits a violation if the device produces a recorded image or video of a motor vehicle in violation of the Vehicle Code or a substantially similar local ordinance "pertaining to traffic control signals exhibiting either a red light or a flashing red light." (The relevant sections of the Vehicle Code are Sections 612 and 614.)

Under the bill, a local unit could prosecute violations detected by an automated device. A local ordinance could impose a civil fine of not more than \$130 for civil offenses recorded by a device, and additional fees could be imposed. The revenue from these civil fines would be applied to defray the costs of the installation, operation, and maintenance of the safety device program, with remaining revenue distributed 50% to the local unit's general fund and 50% to the State Treasurer for deposit in the state's General Fund.

A local unit could appoint one or more entities to serve as an agent to administer such a program and could enter into an agreement with a private agent for automated traffic enforcement devices. Further, a local unit could contract with another local unit of government.

House Bill 4762 would make a complementary amendment to the Revised Judicature Act. It would include the term "civil offense" in its definitions, and define it to mean a violation of a traffic law that is or may be prosecuted under the Automated Traffic Enforcement Division of the Motor Vehicle Code (MCL 257.751 et al.). The bill is tied to House Bill 4763.

***DETAILED SUMMARY OF HOUSE BILL 4763:***

The bill would amend the Michigan Vehicle Code to do the following:

- Specify that a local unit of government could operate an automated traffic enforcement safety device program and prosecute violations detected by it upon enacting an ordinance or adopting a resolution authorizing its use and publishing notice of the location of the devices on its website, together with the factors leading to the selection of the device placement at a particular intersection. Such placement information would include the following factors: the number of vehicle crashes that occurred at that intersection during the preceding year; the average number of pedestrians and non-motorized vehicles crossing the intersection; whether the intersection is a high-congestion area; and any other traffic-related issues the local unit of government considers relevant to ensure public safety.
- Specify that the local unit of government could not consider the amount of fines, costs, and fees collected as a result of moving violation citations issued at an intersection where the traffic device is placed.
- Allow a local unit of government to appoint one or more persons or entities to serve as agent to administer a traffic enforcement safety device program and to permit entry into an agreement with a private agent for the installation, operation, notice processing, and administration and maintenance of the device.
- Permit the local unit of government to contract for the operation of devices through intergovernmental agreements with other local units of government.
- Before enacting citations issued under an ordinance or resolution, require the local unit of government to install advance warning signs within 500 feet along the approach of any roadway where a non-mobile device is located. The warning signs would need to notify motorists of the existence of the device and to also comply with the Michigan Manual for Uniform Traffic Control devices.

Agent

The bill would define an "agent" as a person or entity that is authorized by a local unit of government to administer a program and does all of the following: (a) provides services to local unit of government; (b) operates, maintains, leases, or licenses an automated traffic enforcement safety device; and (c) is authorized to review and assemble the recorded images captured by the devices for review by a police officer.

### Ordinance/Resolution Provision Requirements

Any ordinance enacted or resolution adopted would need to specify all of the following:

- The owner of the vehicle commits a violation of the ordinance if the device produces a recorded image or video of a motor vehicle in violation of an ordinance or provision pertaining to traffic control signals exhibiting either a red or flashing red light.
- The owner of the vehicle establishes a defense if the person identified as having the care, custody, or control of the vehicle or identified as operating the motor vehicle at the time of the violation is not the owner.
- That payment of a penalty and associated costs and fees imposed for a violation could be made by electronic means.
- That a police officer must review and approve the recorded image or images before notices are mailed to the owner of the motor vehicle.
- That for a period of at least 30 days after the first device is placed in a local jurisdiction, a violation recorded by the device could be enforced only by the issuance of a warning.

### Additional Ordinance Requirements

Under the bill, all of the following would apply to an ordinance adopted under this section:

- It would have to impose a civil fine of not more than \$130 for civil offenses recorded by the device.
- It could impose fees associated with the electronic processing of the payment of the civil fine imposed for violation, as well as related administrative fees.
- It would have to provide that the civil fine imposed for a violation would be applied to defray the costs of the installation, operation, and maintenance of the device program and specify that 50% of the remaining funds would be deposited in the general fund of the local government; and 50% would be paid to the State Treasurer for deposit in the General Fund of the state.

### Notification of Alleged Offense

The local unit of government or its agent would be required to mail to the owner of a motor vehicle alleged to have committed a civil offense notice of the offense by first-class mail postmarked no later than 30 days after obtaining the name and address of the owner of the vehicle, but no more than 60 days after the date of the alleged violation. If there is more than one owner, the notice could be issued to the first person listed on the title, or jointly to all listed owners. The notice would need to include all of the following:

- The name and address of the person alleged to be liable as the owner of the vehicle involved in the civil offense.
- The license plate number of the vehicle.
- The civil offense charged.
- The location, date, and time the civil offense occurred.
- The photographic images of the vehicle and vehicle license plate that are captured by the device with information on how to view, through electronic means, the recorded images.
- A statement that recorded images are prima facie evidence of a civil offense.
- The amount of the civil fine, costs, fees, and assessments imposed for the civil offense along with the time, place, and manner for payment.

#### Citation Authority

A citation issued under this bill would have the same force and effect as a citation issued under Section 742 of the Vehicle Code (by a police officer) and the procedures prescribed in that section would be applicable to the automated device citations. A challenge to the enactment of an ordinance or resolution would need to be brought within 30 days of the passage or adoption or resolution.

#### Ownership of Vehicle

Proof of the registration number of a motor vehicle and corresponding identity of its owner would be prima facie evidence establishing ownership of the vehicle. Also, it would be a rebuttable presumption that the owner of the vehicle was operating the vehicle at the time the violation occurred.

#### Citation Defenses

A person who received a citation could raise the following defenses in lieu of any other defense:

- (a) A citation was issued to the operator of the vehicle for the same conduct by a police officer present at the scene of the civil offense recorded by the device;
- (b) The civil offense occurred during a time when the motor vehicle or license plate had been reported as stolen to a law enforcement agency and had not been recovered prior to the time of the offense, if a copy of the report of the thief is authenticated;
- (c) At the time of the alleged offense, the vehicle was in the care, custody, or control of a person other than the owner, or an employee of the owner of the vehicle, or under a written agreement for rental or lease for a period of not more than 60 days.

If a defense is invoked, the owner would need to provide to the court or agent for the local unit of government a sworn affidavit signed under penalty of perjury containing the name and address of the person who had care, custody, or control of the vehicle, including an employee of the owner, or who was renting or leasing the vehicle at the time the alleged civil offense occurred.

### Transfer of Violation

If the owner of the vehicle meets the affidavit requirements, the court or agent of the local unit of government would be required to mail a notice of the citation to the person identified as having the care, custody, or control of the vehicle at the time the offense occurred. The proof required creates a rebuttable presumption that the person having the care, custody, or control of the motor vehicle at the time of the offense was the operator of the vehicle at the time the offense occurred. The notice would need to contain all of the notice information sent to the owner of the vehicle and also include the following statements:

- That the person receiving the notice was identified by the owner of the motor vehicle as the person having the care, custody, or control of the vehicle at the time the offense occurred.
- That the person could offer a defense as previously described. If the person whom the owner identified denies having the care, custody, or control of the vehicle at the time the offense occurred, the responsibility for the offense would revert to the owner of the vehicle. However, an owner could not attempt to transfer responsibility more than one time using the above procedures.

In cases where a person other than the owner denies he or she was the operator and declines responsibility, a new notice would be issued to the owner stating the other person declined responsibility and giving the owner the option of paying the civil fine, costs, fees, and assessment or contesting the offense by a stated date that could be not less than 20 days from the mailing of the new notice.

### Unsuccessful Transfer of Responsibility

If the owner contests the notice of civil offense after he or she has unsuccessfully attempted to transfer responsibility, and claims in defense that another person was the operator of the vehicle, the court could take appropriate action to cause the owner and the other person to appear at the same hearing to determine responsibility.

### Alternative to Payment of Fine, Cost, Fees

Under the bill, a person receiving a citation is responsible for payment of the associated civil fine, costs, fees, and assessment unless he or she (a) timely returns a signed statement on a form, provided with the notice, stating he or she was not the operator and declining responsibility, in which case responsibility for the offense would revert to the owner; or (b) admits to being the operator but denies committing the offense, in which case the person may contest the offense in the same manner as the owner could contest the offense.

### Local Unit of Government Notice/Referral

Accept in those cases where there is an adjudication that no civil offense occurred or there is otherwise a lawful determination that no civil fine, costs, fees, or assessment would be imposed, the local unit of government or agent would need to send notice to the vehicle owner of any unpaid fine if a civil offense had not been contested and the fine,

fees, or costs, and assessments have not been paid. The notice would need to inform the registered owner that (a) the local unit of government will send a referral to the Secretary of State if the fine, costs, fees, and assessments are not paid within 30 days and (b) that referral would result in the non-renewal of the registration of the vehicle, cause the vehicle's title not to be transferred, and cause the person held responsible to be ineligible to obtain or renew an operators' or chauffeur's license if the fine, costs, fees, and assessment are not paid.

The local unit of government or agent would have to send a referral to the Secretary of State not sooner than 30 days after the final notice was mailed if an offense had not been contested and the fine, costs, fees, and assessment not paid. The referral to the secretary of state would need to include: (a) any information known or available to the agent or local unit of government concerning the license plate number and year of registration and the name of the vehicle owner; (b) the date when the civil offense occurred; (c) the date when the final notice was mailed; and (d) the seal, logo, emblem, or electronic seal of the local unit of government.

#### Secretary of State Referral

If the Secretary of State receives a referral, it would be received into the database within five days of receipt and the Secretary of State could refuse to (a) renew the registration of the motor vehicle, (b) cause title to not be transferred, and (c) cause the person held responsible to be ineligible to obtain or renew an operator's or chauffeur's license until the civil fine, costs, fees, and assessment are paid. The Secretary of State would need to mail a notice to the registered owner informing the owner of those consequences.

The Secretary of State would remove the penalties if any person presents adequate proof that the fine, costs, fees, and assessments have been paid and any imposed reinstatement fee also paid, if applicable.

If a local government has given notice of nonpayment to the Secretary of State and subsequently the fees, costs, assessments, and fines are paid, the local unit of government would need to transmit notice of the payment to the Secretary of State.

#### Court Proceedings over Citation

Under the bill, the following procedures would apply to proceedings to contest a citation.

- The citation, any evidence of the civil offense produced by a device, and evidence of ownership of a vehicle by copies or summaries of official records would be admissible into evidence as official records or business records without the need for additional foundation.
- The court could assess a fine or not more than \$130 and assess costs of not more than \$130, which would be disbursed as described under the bill. Court costs would be retained by the local unit of government where the citation was issued.

#### Citation Fees and Trauma Assessment

A fee of \$10 would be collected by the court in connection with a citation, to be paid to the local unit of government where the citation was issued as compensation for record keeping and transaction processing relative to citations issued. A \$5 statewide trauma assessment would be collected by the court in connection with a citation issued. This assessment would be deposited in the Statewide Trauma Fund established under the act.

No person would be responsible for payment of a civil fine, costs, fees, or assessment for a citation issued if the operator of the vehicle who is the subject of the citation is adjudicated to have not committed a civil offense or there is otherwise a lawful determination that no civil fine costs, fees, or assessment could be imposed.

#### No Arrest or Imprisonment

A person could not be arrested or imprisoned for nonpayment of a civil fine, costs, fees, or assessment imposed under the bill.

#### Elimination of Recorded Images

Unless otherwise ordered by a court of competent jurisdiction, the recorded images and videos produced by a device would be destroyed within 90 days of the final disposition of the case to which it pertains, including any appeals. In addition, all recorded images and videos produced by a device that do not identify a civil offense would need to be destroyed by the local unit of government or an agent within 90 days of the date the image was recorded, unless otherwise ordered by a court. The images and videos could not contain images of the faces of the operator or of the passengers in the vehicle.

#### Citation Limitations

All of the following would apply to a civil offense that is the subject of a citation issued under a device program:

- It is not a moving violation.
- It could not be considered in the provision of motor vehicle insurance.
- It could not be reported to the Secretary of State for inclusion on a driving record.
- It could not cause the assessment of points against an operator's or chauffeur's license.

#### Annual E-Report on Program

No later than one year after the date a local unit of government implements an automated traffic enforcement safety device program, and each year thereafter, it would be required to post on its website, a report that includes comparison and analysis of the number of citations issued under the program.

#### Statewide Trauma Fund

The bill would establish a Statewide Trauma Fund within the Department of Treasury to be administered by the State Treasurer. The Department of Treasury would be required to receive and forward to the treasurer funds for deposit into the Fund all the statewide trauma assessments collected. The Fund could receive revenue from any source, as



appropriated by the Legislature. The revenue in the Trauma Fund would be expended to pay for costs related to the statewide trauma system described in The Crime Victims Services Act (MCL 780.904). Money in the Fund that is unexpended at the end of the state fiscal year would be carried over to the succeeding fiscal year, could not revert to the General Fund, and would need to be expended as provided under the Vehicle Code.

Intent of Legislation

The bill specifies the intent of the legislation as follows: *"It is the intent of the legislation that a local unit of government use revenue from citations issued . . . to enhance its funding for law enforcement operations, not to replace current funding."*

**FISCAL IMPACT:**

A fiscal analysis is in process. The summary above describes how fines, fees, and assessments are to be divided.

Legislative Analyst: E. Best

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.