

AMENDED IN ASSEMBLY JUNE 30, 2010

AMENDED IN SENATE MAY 25, 2010

AMENDED IN SENATE MAY 11, 2010

AMENDED IN SENATE MARCH 23, 2010

SENATE BILL

No. 1362

Introduced by Senator Simitian
(Coauthors: Senators Ashburn and Huff)
(Coauthor: Assembly Member Hill)

February 19, 2010

An act to amend Sections 21455.5 and 40518 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 1362, as amended, Simitian. Vehicles: automated traffic enforcement systems.

(1) Existing law authorizes the limit line, intersection, or other places where a driver is required to stop to be equipped with an automated enforcement system, as defined, if the system meets certain requirements. Existing law authorizes a governmental agency to contract out the operation of the system under certain circumstances, except for specified activities, that include, among other things, establishing guidelines for selection of location. A violation of the Vehicle Code is a crime.

This bill would require that those requirements include identifying the system by signs posted at each intersection where a system is operating ~~and that the guidelines be based solely on safety and be made available to the public, including posting the guidelines on the governmental agency's Internet Web site, if applicable.~~ The bill would

require, prior to installing an automated traffic enforcement system, the governmental agency, for a minimum period of 6 months, to collect traffic collision data for the type of violation to be photographed and would also require at each location where a system is to be installed that the traffic collision data demonstrate a significant need for the infraction upon which the citations will be based, except as specified. The bill would authorize a governmental agency to use an automated traffic enforcement system only if the data indicate that there is a significant number of collisions that occur as a result of the type of violation the governmental agency seeks to use the automated system to enforce. *The bill would require the governmental agency to adopt a finding of fact establishing the need for the system at a specific location for reasons related to safety.*

The bill would prohibit an employee, agent, or representative of the governmental agency or of a law enforcement agency from contacting the registered owner of a vehicle prior to issuing a notice to appear, either directly or indirectly, in an effort to determine the identity of an alleged automated traffic enforcement system violator without making the registered owner aware, in a clear and prominent fashion, that the registered owner is not required to provide that information and that failure to provide that information shall not result in any adverse action *or relieve the registered owner or alleged automated traffic enforcement system violator of any responsibility or liability associated with the alleged violation.*

The bill would make any citation issued by a governmental agency null and void if the governmental agency violates or engages in a contract that violates specified activities. The bill would also require the dismissal of any citation issued by a law enforcement agency if the court finds that the governmental agency has failed to operate the automated traffic enforcement system in compliance with specified provisions of law applicable to automated traffic enforcement. If a court finds that the governmental agency has failed to operate the system in compliance with applicable provisions of law, a law enforcement agency would be prohibited from issuing any citations until the governmental agency demonstrates to the satisfaction of the court that it is in full compliance with all of the requirements applicable to automated traffic enforcement.

The bill would prohibit a governmental agency that operates an automated traffic enforcement system from considering revenue generation, beyond recovering its actual costs of operating the system,

as a factor when considering whether or not to operate a system within its local jurisdiction. The bill would require the manufacturer or supplier that operates an automated traffic enforcement system, in cooperation with the governmental agency, to submit an annual report to the Judicial Council that includes specified information.

(2) Existing law provides special written, mailed notice to appear procedures in connection with certain alleged violations recorded by an automated traffic enforcement system and provides that whenever a written notice to appear has been issued by a peace officer or by a qualified employee of a law enforcement agency on a form approved by the Judicial Council for an alleged traffic violation recorded by an automated traffic enforcement system, and delivered by mail within 15 days of the alleged violation to the current address of the registered owner of the vehicle on file with the Department of Motor Vehicles, with a certificate of mailing obtained as evidence of service, an exact and legible duplicate copy of the notice when filed with the magistrate constitutes a complaint to which the defendant may enter a plea.

This bill ~~would delete “qualified employee of a law enforcement agency” from these provisions~~ and would expand the information that must be included on a notice to appear. The bill would authorize the mailing of a specified courtesy notice or any other notice other than a notice to appear by the issuing agency to the registered owner or the alleged violator prior to issuing a notice to appear that is required to contain specified information. The bill would prohibit a manufacturer or supplier of an automated traffic enforcement system or the governmental agency operating the system from altering the notice to appear or any other form approved by the Judicial Council. If a form is found to have been *materially* altered, the bill would ~~require~~ *authorize* that the citation, based on the altered form, be dismissed. *The bill would also require that the citation be dismissed if a magistrate or judge makes a finding that there are grounds for dismissal, in certain circumstances.*

(3) Because it is unlawful and constitutes an infraction for any person to violate, or fail to comply with any provision of the Vehicle Code, this bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21455.5 of the Vehicle Code is amended
2 to read:
3 21455.5. (a) The limit line, the intersection, or a place
4 designated in Section 21455, where a driver is required to stop,
5 may be equipped with an automated traffic enforcement system if
6 the governmental agency utilizing the system meets all of the
7 following requirements:
8 (1) Identifies the system by signs posted at each intersection
9 where a system is operating that clearly indicate the system's
10 presence and are visible to traffic approaching from all directions
11 *in which the automated traffic enforcement system is being utilized*
12 *to issue citations. A governmental agency utilizing such a system*
13 *does not need to post signs visible to traffic approaching the*
14 *intersection from directions not subject to automated traffic*
15 *enforcement.*
16 (2) If it locates the system at an intersection, and ensures that
17 the system meets the criteria specified in Section 21455.7.
18 (b) Prior to issuing citations under this section, a local
19 jurisdiction utilizing an automated traffic enforcement system shall
20 commence a program to issue only warning notices for 30 days.
21 The local jurisdiction shall also make a public announcement of
22 the automated traffic enforcement system at least 30 days prior to
23 the commencement of the enforcement program.
24 (c) Only a governmental agency, in cooperation with a law
25 enforcement agency, may operate an automated traffic enforcement
26 system. A governmental agency that operates an automated traffic
27 enforcement system shall do all of the following:
28 (1) Develop uniform guidelines for screening and issuing
29 violations and for the processing and storage of confidential
30 information, and establish procedures to ensure compliance with
31 those guidelines.
32 (2) Perform administrative functions and day-to-day functions,
33 including, but not limited to, all of the following:
34 (A) Establishing guidelines for selection of location based solely
35 ~~on safety. The guidelines shall be made available to the public,~~

1 including posting the guidelines on the governmental agency's
 2 Internet Web site, if applicable. Prior to installing an automated
 3 traffic enforcement system, the governmental agency shall, for a
 4 minimum period of six months, collect traffic collision data for
 5 the type of violation to be photographed. At each location where
 6 a system is to be installed, the traffic collision data shall
 7 demonstrate a significant need for the infraction upon which the
 8 citation will be based. A governmental agency may use an
 9 automated traffic enforcement system to provide evidence of a
 10 violation involving a driver turning right, turning left, or proceeding
 11 straight through an intersection during a red light only if the data
 12 indicate that there is a significant number of collisions that occur
 13 as a result of the type of violation the governmental agency seeks
 14 to use the automated system to enforce. *location. Prior to installing*
 15 *an automated traffic enforcement system, the government agency*
 16 *shall make and adopt a finding of fact establishing that the system*
 17 *is needed at a specific location for reasons related to safety.*

18 (B) Ensuring that the equipment is regularly inspected.

19 (C) Certifying that the equipment is properly installed and
 20 calibrated, and is operating properly.

21 (D) Regularly inspecting and maintaining warning signs placed
 22 under paragraph (1) of subdivision (a).

23 (E) Overseeing the establishment or change of signal phases
 24 and the timing thereof.

25 (F) Maintaining controls necessary to ensure that only those
 26 citations that have been reviewed and approved by law enforcement
 27 are delivered to actual violators. An employee, agent, or
 28 representative of the governmental agency or of the law
 29 enforcement agency shall not contact the registered owner of a
 30 vehicle prior to issuing a notice to appear either directly or
 31 indirectly in an effort to determine the identity of an alleged
 32 automated traffic enforcement system violator without making the
 33 registered owner aware, in a clear and prominent fashion, that the
 34 registered owner is not required to provide that information and
 35 that failure to provide that information shall not result in any
 36 adverse action *or relieve the registered owner or alleged automated*
 37 *traffic enforcement system violator of any responsibility or liability*
 38 *associated with the alleged violation.*

39 ~~(3) The guidelines adopted pursuant to subparagraph (A) of~~
 40 ~~paragraph (2) and the requirements for data collection regarding~~

1 ~~the installation of an automated traffic enforcement system shall~~
2 ~~not apply to automated traffic enforcement systems installed prior~~
3 ~~to January 1, 2011.~~

4 (d) ~~(1)~~ The activities listed in subdivision (c) that relate to the
5 operation of the system may be contracted out by the governmental
6 agency, if it maintains overall control and supervision of the
7 system. However, the activities listed in paragraph (1) of, and
8 subparagraphs (A), (D), (E), and (F) of paragraph (2) of,
9 subdivision (c) may not be contracted out to the manufacturer or
10 supplier of the automated traffic enforcement system.

11 ~~(2) Any citation issued by a governmental agency is null and~~
12 ~~void if it violates or engages in a contract that violates any of the~~
13 ~~activities described in paragraph (1) of, or subparagraph (A), (D),~~
14 ~~(E), or (F) of paragraph (2) of, subdivision (c).~~

15 ~~(3) Any citation issued by a law enforcement agency shall be~~
16 ~~dismissed if the court finds that the governmental agency has failed~~
17 ~~to operate the automated traffic enforcement system in compliance~~
18 ~~with the requirements of this section or any other law applicable~~
19 ~~to automated traffic enforcement.~~

20 ~~(4) If a court finds that the governmental agency has failed to~~
21 ~~operate the system in compliance with this section or any other~~
22 ~~law applicable to automated traffic enforcement, a law enforcement~~
23 ~~agency shall not issue any citations until the governmental agency~~
24 ~~demonstrates to the satisfaction of the court that it is in full~~
25 ~~compliance with the requirements of this section or any other law~~
26 ~~applicable to automated traffic enforcement.~~

27 (e) (1) Notwithstanding Section 6253 of the Government Code,
28 or any other provision of law, photographic records made by an
29 automated traffic enforcement system shall be confidential, and
30 shall be made available only to governmental agencies and law
31 enforcement agencies and only for the purposes of this article.

32 (2) Confidential information obtained from the Department of
33 Motor Vehicles for the administration or enforcement of this article
34 shall be held confidential, and may not be used for any other
35 purpose.

36 (3) Except for court records described in Section 68152 of the
37 Government Code, the confidential records and information
38 described in paragraphs (1) and (2) may be retained for up to six
39 months from the date the information was first obtained, or until
40 final disposition of the citation, whichever date is later, after which

1 time the information shall be destroyed in a manner that will
2 preserve the confidentiality of any person included in the record
3 or information.

4 (f) Notwithstanding subdivision (d), the registered owner or any
5 individual identified by the registered owner as the driver of the
6 vehicle at the time of the alleged violation shall be permitted to
7 review the photographic evidence of the alleged violation.

8 (g) (1) A contract between a governmental agency and a
9 manufacturer or supplier of automated traffic enforcement
10 equipment may not include provision for the payment or
11 compensation to the manufacturer or supplier based on the number
12 of citations generated, or as a percentage of the revenue generated,
13 as a result of the use of the equipment authorized under this section.

14 (2) Paragraph (1) does not apply to a contract that was entered
15 into by a governmental agency and a manufacturer or supplier of
16 automated traffic enforcement equipment before January 1, 2004,
17 unless that contract is renewed, extended, or amended on or after
18 January 1, 2004.

19 (3) A governmental agency that operates an automated traffic
20 enforcement system shall not consider revenue generation, beyond
21 recovering its actual costs of operating the system, as a factor when
22 considering whether or not to operate a system within its local
23 jurisdiction.

24 (h) A manufacturer or supplier that operates an automated traffic
25 enforcement system pursuant to this section shall, in cooperation
26 with the governmental agency, submit an annual report to the
27 Judicial Council that includes, but is not limited to, all of the
28 following information:

29 (1) The number of alleged violations captured by the systems
30 they operate.

31 (2) The number of citations issued by a law enforcement agency
32 based on information collected from the automated traffic
33 enforcement system.

34 (3) The number of citations issued for each type of violation.

35 (4) The number and percentage of citations that are ~~contested~~
36 *paid in full*.

37 ~~(5) The number and percentage of citations that are dismissed.~~

38 ~~(6)~~

1 (5) The number of traffic collisions at each intersection that
2 have occurred prior to, and after the installation of, the automated
3 traffic enforcement system.

4 SEC. 2. Section 40518 of the Vehicle Code is amended to read:

5 40518. (a) Whenever a written notice to appear has been issued
6 by a peace officer *or by a qualified employee of a law enforcement*
7 *agency* on a form approved by the Judicial Council for an alleged
8 violation of Section 22451, or, based on an alleged violation of
9 Section 21453, 21455, or 22101 recorded by an automated traffic
10 enforcement system pursuant to Section 21455.5 or 22451, and
11 delivered by mail within 15 days of the alleged violation to the
12 current address of the registered owner of the vehicle on file with
13 the department, with a certificate of mailing obtained as evidence
14 of service, an exact and legible duplicate copy of the notice when
15 filed with the magistrate shall constitute a complaint to which the
16 defendant may enter a plea. Preparation and delivery of a notice
17 to appear pursuant to this section is not an arrest.

18 (b) (1) A notice to appear shall contain the name and address
19 of the person, the license plate number of the person's vehicle, the
20 violation charged, including a description of the offense, and the
21 time and place when, and where, the person may appear in court
22 or before a person authorized to receive a deposit of bail. The time
23 specified shall be at least 10 days after the notice to appear is
24 delivered. *If, after the notice to appear has been issued, the citing*
25 *peace officer or qualified employee of a law enforcement agency*
26 *determines that, in the interest of justice, the citation or notice*
27 *should be dismissed, the citing agency may recommend, in writing,*
28 *to the magistrate or the judge that the case be dismissed. The*
29 *recommendation shall cite the reasons for the recommendation*
30 *and be filed with the court. If the magistrate or judge makes a*
31 *finding that there are grounds for dismissal, the finding shall be*
32 *entered on the record and the infraction dismissed.*

33 (2) A notice to appear shall also contain all of the following
34 information:

35 (A) The methods by which the registered owner of the vehicle
36 or the alleged violator may view and discuss with the issuing
37 agency, both by telephone and in person, the evidence used to
38 substantiate the violation.

39 (B) The contact information of the issuing agency.

1 (C) Information provided by the manufacturer or supplier of
2 the automated traffic enforcement system or the governmental
3 agency with which it contracts that clearly and conspicuously
4 identifies the manufacturer or supplier of the system.

5 (c) This section and Section 40520 do not preclude the issuing
6 agency from mailing a courtesy notice or any other notice other
7 than a notice to appear to the registered owner of the vehicle or
8 the alleged violator prior to issuing a notice to appear. The courtesy
9 notice or other notice other than a notice to appear shall be on a
10 form approved by the Judicial Council and shall contain all of the
11 following information:

12 (1) The methods by which the registered owner of the vehicle
13 or the alleged violator may view and discuss with the issuing
14 agency, both by telephone and in person, the evidence used to
15 substantiate the violation.

16 (2) The contact information of the issuing agency.

17 (3) Information provided by the manufacturer or supplier of the
18 automated traffic enforcement system or the governmental agency
19 with which it contracts that clearly and conspicuously identifies
20 the manufacturer or supplier of the system.

21 (d) A manufacturer or supplier of an automated traffic
22 enforcement system or the governmental agency operating the
23 system shall not alter the notice to appear or any other form
24 approved by the Judicial Council. If a form is found to have been
25 *materially* altered, the citation based on the altered form ~~shall~~ *may*
26 be dismissed.

27 SEC. 3. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.