

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 325 Uniform Traffic Control

SPONSOR(S): Reagan and others

TIED BILLS: IDEN./SIM. BILLS: SB 294

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Roads, Bridges & Ports Policy Committee		Brown	Miller
2)	Health Care Regulation Policy Committee			
3)	Finance & Tax Council			
4)				
5)				

SUMMARY ANALYSIS

HB 325 creates the "Mark Wandall Traffic Safety Act." The bill authorizes counties and municipalities to enact ordinances permitting the use of traffic infraction detectors and specifies the required content of the ordinance. The penalty for failing to stop at a steady red light, as determined through the use of a traffic infraction detector, is a fine of \$150. One half of this fine is kept by the jurisdiction (\$75), while the other half is distributed to the General Revenue Fund (\$55) and the Department of Health (DOH) Administrative Trust Fund (\$20).

The bill grants counties and municipalities (and their agents) access to Florida Department of Transportation (FDOT) right-of-way to install and operate traffic infraction detectors. The traffic infraction detector must conform to the contract specifications adopted by FDOT. The bill provides a "grandfather clause" valid until the earlier of (i) July 1, 2015 or (ii) one year after FDOT's final adoption of specifications for traffic infraction detectors.

The bill provides a complaint process for complaints that a county or municipality is employing traffic infraction detectors for purposes other than the promotion of public health, welfare, and safety or in a manner inconsistent with the law. Each county or municipality that operates a traffic infraction detector must submit a biannual report to FDOT which details the results of the detectors and the procedures for enforcement. FDOT must submit a summary report to the Governor and Legislature in even-numbered years. The report must include a review of the information submitted by the counties and municipalities and any recommendations or necessary legislation.

To the extent local governments choose to enact ordinances to permit the use of traffic infraction detectors there will be a fiscal impact to the local governments for the cost of the installation and maintenance of the devices, the amount of which will vary depending on the negotiated agreement between the local government and any private vendor providing the equipment.

In 2009, the Revenue Estimating Conference estimated that a substantially similar bill would have a recurring positive indeterminate impact on state revenues and a recurring indeterminate impact on local governments. There may be an increase in fine revenue for the local governments that choose to enact ordinances permitting the use of traffic infraction detectors, the amount of which is indeterminate and reliant on driver awareness and future behavior. There may be a decrease in fine revenues to local governments who are now collecting fines from traffic infraction detector ordinances adopted prior to the provisions of this bill becoming effective.

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:

##### Present Situation

According to the Department of Highway Safety and Motor Vehicles (DHSMV), in 2008 there were 76 fatalities related to motor vehicle drivers who disregarded a traffic signal in Florida.<sup>1</sup> This represents approximately 3 percent of all fatal accidents in 2008, the sixth-highest cause of traffic fatalities.<sup>2</sup>

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>3</sup> Red light cameras have been used in at least 33 foreign countries since the 1970s.<sup>4</sup>

An Insurance Institute for Highway Safety review of international red light camera studies concluded that cameras reduce red light violations by 40-50 percent and reduce injury crashes by 25-30 percent.<sup>5</sup> A 2005 study of red light camera programs in seven metropolitan communities by the 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>6</sup> It is possible that the volume of rear-end collisions will decline as drivers get used to the idea that the vehicle in front of them will stop at a red light.<sup>7</sup>

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<sup>1</sup> *Florida Traffic Crash Statistics Report 2008*, Department of Highway Safety and Motor Vehicles, June 30, 2009.

<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> National Campaign to Stop Red Light Running, [http://www.stopredlightrunning.com/get\\_the\\_facts.htm](http://www.stopredlightrunning.com/get_the_facts.htm)

<sup>4</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>5</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>6</sup> *Safety Evaluation of Red-Light Cameras*, Federal Highway Administration, Publication No. FHWA-HRT-05-048, available online here: <http://www.tfhr.gov/safety/pubs/05048/>

<sup>7</sup> *Id.*

Other studies, including a 7-jurisdiction study conducted by the Virginia Department of Transportation<sup>8</sup> and a USDOT-funded study by the Urban Transit Institute at North Carolina A&T University,<sup>9</sup> have reached conflicting results regarding crash reduction. The results of these studies are best summarized by this excerpt from the North Carolina study:

The results do not support the conventional wisdom expressed in recent literature and popular press that red light cameras reduce accidents.... Our findings are more pessimistic, finding no change in angle accidents and large increases in rear-end crashes and many other types of crashes relative to other intersections. We did find a decrease in accidents involving a vehicle turning left and a vehicle on the same roadway, which may have been included as an angle accident in some other studies. However, given that these left turn accidents occur only one third as often as angle accidents, and the fact that we find no benefit from decreasing severity of accidents suggests that there has been no demonstrable benefit from the RLC [red light camera] program in terms of safety. In many ways, the evidence points toward the installation of RLCs as a detriment to safety.

Critics on each side of the debate raise concerns about the scientific methodology of opposing studies and potential bias of researchers. Criticisms have focused on issues such as sample size, control of variables (weather, similarity of intersections, etc), and other possible control methods (e.g., failure to analyze intersections before and after detectors are placed).

Currently there are no recognized independent standards or certifications for the red light camera industry. The Federal Highway Administration (FHWA) and the National Highway Traffic Safety Administration (NHTSA) have developed guidelines for the use of state and local agencies on the implementation and operation of red light camera systems. These guidelines were most-recently updated in January 2005.<sup>10</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, safety education and increased enforcement by law enforcement officers can significantly reduce red light violations.

Examples of engineering improvements include:

- *Improving signal head visibility.* Signal head visibility can be improved by increasing the size of the traffic signal lamps from 8 to 12 inches. The addition of backplates can also make signals more visible.
- *All-red interval.* An all-red clearance interval, where the traffic signals on all sides are red for a period of time, provides additional time for motorists already in the intersection to proceed through the intersection on the red indication while holding cross traffic on the cross street approaches. The red clearance interval is not intended to reduce the incidence of red light running; rather it is a safety measure.
- *Appropriate yellow times.* 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.
- *Traffic signal coordination.* A coordinated traffic signal operation where motorists are able to move smoothly in platoons from intersection to intersection reduces the risk of red light violations and collisions.

Cameras are permitted by current Florida law to enforce violations of payment of tolls.<sup>11</sup> For example, toll facility operators use a digital camera to capture an image of the vehicle's license plate as the

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<sup>8</sup> Available online here: <http://www.thenewspaper.com/rlc/docs/05-vdot.pdf>

<sup>9</sup> Available online here: <http://www.thenewspaper.com/rlc/docs/burkeyobeng.pdf>

<sup>10</sup> U.S. Department of Transportation, *Red Light Camera Systems Operational Guidelines*, Publication No. FHWA-SA-05-002, January 2005.

<sup>11</sup> s. 316.1001(2)(d), F.S.

vehicle travels through the tolling zone. If the system receives payment from a SunPass, the image is deleted. If no payment is received, the image is processed for video tolling or is considered a toll violation and a Uniform Traffic Citation is issued.

In response to the city of Pembroke Pines' inquiry regarding the use of unmanned cameras to enforce violations of traffic signals, the Attorney General issued an advisory legal opinion on July 12, 2005.<sup>12</sup> The opinion concluded that it was within the local government's scope of authority "to enact an ordinance authorizing the city:

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

The problem identified by a 1997 Attorney General opinion<sup>13</sup> was whether unmanned electronic traffic infraction detectors may independently be used as the basis for issuing citations for violations of traffic laws. Current statute requires that citations be issued when an officer "observes the commission of a traffic infraction."<sup>14</sup> The 1997 Attorney General opinion concluded that nothing precludes the use of unmanned cameras to record violations of s. 316.075, F.S., 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." The 2005 opinion reached the same conclusion, stating, "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.

Several local governments in Florida have participated in the use of red light cameras enforcement of red light violations. Due to the Attorney General's advisory opinions, the majority of 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 Palm Beach County Commission reported that their two-month pilot project using traffic cameras at a test intersection in Palm Beach County showed alarming results. One fifth of those who ran a red light did so two seconds after the light had changed. On average, fifty cars a day ran the light at the test site during the first month of the pilot project. During the second month of the project, following publicity about the program, that number dropped to less than twenty.<sup>15</sup>

The city of Gulf Breeze passed a local ordinance in 2005 allowing use of red light cameras. 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>16</sup> and a \$100 civil fee is assessed against the motor vehicle owner. The city has installed one red light camera at Daniel Drive and U.S. 98 in front of Gulf Breeze Middle School. The Gulf Breeze City Council adopted the ordinance despite the opinion issued by the Attorney General. The Gulf Breeze Police Chief said that after the signs went up, violations dropped from 150 a month to 95 in a little over a year.<sup>17</sup> The camera was installed by "Traffipax." According to the police chief, the vendor paid for the initial cost of setting up the program. In return, the vendor is paid a percentage of the \$100 fine. "Peek Traffic", the vendor who donated the equipment and monitoring for Sarasota County's pilot project, states that a camera is valued at approximately \$50,000 and costs \$10,000 to install.

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<sup>12</sup> Attorney General Opinion 05-41.

<sup>13</sup> Attorney General Opinion 97-06.

<sup>14</sup> s. 316.640(5)(a), F.S.

<sup>15</sup> Palm Beach County Board of County Commissioners, "FY 2007 State Legislative Program", available online here: <http://www.pbcgov.com/legislativeaffairs/pdf/LegProg.pdf>

<sup>16</sup> Section 18-113, Code of Ordinances, City of Gulf Breeze, Florida.

<sup>17</sup> Ginny Laroe, "Police Research Traffic Cameras," *Sarasota Herald Tribune*, March 26, 2007.

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,” variations on the notice requirements sent to the motor vehicle owner, and variations on the process whereby a motor vehicle owner may challenge the violation.

## **Proposed Changes**

### **Local Ordinance Authorization**

The bill creates the “Mark Wandall Traffic Safety Act.” The bill creates s. 316.0083, F.S., authorizing counties and municipalities to enact ordinances permitting the use of traffic infraction detectors and specifies the required content of the ordinance. The traffic infraction detector must conform to the contract specifications adopted by FDOT. Pursuant to the new statute, each local ordinance must:

- provide for the use of a traffic infraction detector to enforce s. 316.075(1)(c), F.S., which requires the driver of a motor vehicle to stop when facing a traffic signal steady red light on the streets and highways under the jurisdiction of the county or municipality;
- authorize an infraction enforcement officer or a code enforcement officer to issue a ticket for violation of s. 316.075(1)(c), F.S., and to enforce the payment of tickets for such violation;
- require signs to be posted at locations designated by the county or municipality providing notification that a traffic infraction detector may be in use;
- require the county or municipality to make a public announcement and conduct a public awareness campaign of the proposed use of traffic infraction detectors at least 30 days before commencing the enforcement program; and
- establish a fine of \$150 to be assessed against the owner of a motor vehicle whose vehicle fails to stop when facing a red light, as determined through use of a traffic infraction detector.

The ordinance must allow the city to operate a traffic infraction detector within the right-of-way owned by the county or FDOT. The county or the FDOT is required to issue permits for installation, including access to FDOT right-of-way, according to the established permitting process. Furthermore, placement and installation of traffic infraction detectors is allowed on the State Highway System, county roads, and city streets pursuant to specifications developed by FDOT, so long as the safety and operation of the road facility is not impaired.

### **Fines**

The fine imposed by the local ordinance is done so in the same manner and is subject to the same limitations as provided for parking violations under s. 316.1967, F.S. DHSMV’s authority to suspend or revoke a license (contained in Chapter 318 and s. 322.27, F.S.) is not applicable to a violation of a traffic infraction detector ordinance enacted under s. 316.0083, F.S. A violation is not a conviction of the operator, may not be made a part of the operator’s driving record, may not be used for purposes of setting motor vehicle insurance rates, and may not result in points assessed against the operator’s driver’s license.

Fines assessed under the ordinance are disbursed as follows:

- \$75 retained by the county or municipality enforcing the ordinance;
- \$55 to the General Revenue Fund; and
- \$20 to be deposited in the DOH Administrative Trust Fund, with the following further direction:
  - Eighteen percent shall be distributed to verified trauma centers that have a local funding contribution as of December 31. Distribution of funds shall be based on trauma caseload volume for the most recent calendar year available.

- Thirty-eight percent shall be distributed to verified trauma centers based on trauma caseload volume for the most recent calendar year available. The determination of caseload volume for distribution of shall be based on DOH's Trauma Registry data.
- Thirty-eight percent shall be distributed to verified trauma centers based on severity of trauma patients for the most recent calendar year available. The determination of severity for distribution of shall be based on DOH's International Classification Injury Severity Scores or another statistically valid and scientifically accepted method of stratifying a trauma patient's severity of injury, risk of mortality, and resource consumption as adopted by DOH by rule, weighted based on the costs associated with and incurred by the trauma center in treating trauma patients. The weighting of scores shall be established by DOH by rule.
- Three percent shall be distributed to public hospitals that qualify for distributions that are not verified trauma centers but are located in trauma service areas and that do not have a verified trauma center based on their proportionate number of emergency room visits on an annual basis.
- Three percent shall be distributed equally to crisis-stabilization units, rural health initiatives, and community-based support programs that provide support and services for individuals who have sustained traumatic brain injury.

#### Procedure for Issuance and Contestation of Tickets

The bill cites current statutory procedures addressing liability for payment of parking ticket violations and other parking violations<sup>18</sup> and applies those procedures to violations of traffic infraction detector ordinances created under s. 316.0083, F.S., with the following additional requirements regarding the information which must be included in the ticket:

- the name and address of the person alleged to be liable as the registered owner or operator of the vehicle involved in the violation;
- the tag number of the vehicle;
- the violation charged;
- a photographic image evidencing the violation;
- the location where the violation occurred;
- the date and time of the violation;
- a signed statement by a specifically trained technician employed by the agency or its contractor that, based on inspection of recorded images, the motor vehicle was being operated in violation of s. 316.075(1)(c), F.S.;
- the amount of the fine;
- the date by which the fine must be paid;
- the procedure for contesting the violation alleged in the ticket; and
- a warning that failure to contest the violation in the manner and time provided is deemed an admission of the liability and that a default may be entered thereon.

The violation is processed by the county or municipality that has jurisdiction over the street or highway where the violation occurred or by any entity authorized by the county or municipality to prepare and mail the ticket. The ticket must be sent by first-class or certified mail to the owner of the vehicle involved in the violation, postmarked no later than 30 days after obtaining the name and address of the registered owner, but in no event later than 60 days after the violation.

The owner is responsible for payment of the fine unless the owner can establish that the vehicle:

- Passed through the intersection to yield the right-of-way to an emergency vehicle or as part of a funeral procession;
- Passed through the intersection at the direction of a law enforcement officer;

<sup>18</sup> Section 316.1967(2)-(5), F.S.

- Was, at the time of the violation, reported as stolen;
- Passed through the intersection as the result of a medical emergency; or
- Received a Uniform Traffic Citation (UTC) for the alleged violation.

The owner of the vehicle must, within 30 days, furnish an affidavit to the county or municipality that provides detailed information supporting an exemption as provided above, including relevant documents such as a police report (if the car had been reported stolen), a health-care facility or medical doctor (if a medical emergency is claimed), or a copy of the UTC, if issued.

A person may elect to contest the determination that they failed to stop at a red light as evidenced by the traffic infraction detector by electing to appear before a judge or other locally-designated official authorized to adjudicate traffic infractions. If the person elects to appear before the court, they are deemed to have waived the limitation of civil penalties imposed for the violation and the court may impose a civil penalty not to exceed \$150 plus court costs. The court may take appropriate measures to enforce collection of any penalty not paid within the time permitted by the court.

A certificate sworn to or affirmed by a person authorized under s. 316.0083, F.S., who is employed by or under contract with the county or municipality where the infraction occurred, or a fax of such a certificate, that is based upon inspection of photographs or other recorded images produced by the traffic infraction detector, is considered evidence of the facts contained in the certificate. A photograph or other recorded image evidencing a violation must be available for inspection in any proceeding to adjudicate liability for violation of an ordinance enacted under s. 316.0083, F.S.

The bill authorizes counties and municipalities to provide the names of those who have one or more outstanding violations, as recorded by traffic infraction detectors, to DHSMV. Pursuant to s. 320.03(8), F.S., if a person's name appears on DHSMV's list, a license plate or revalidation sticker may not be issued until the fine has been paid.

### Oversight and Accountability

Any traffic infraction detector installed on the state's streets or highways must meet contract specifications established by FDOT and must be tested at regular intervals according to procedures prescribed by FDOT. The bill creates a new s. 316.0776, F.S., providing that FDOT will develop traffic infraction detector specifications as part of its handbook addressing material and equipment connections to state electrical signal boxes.

The bill provides a 'grandfather clause' for a period of one year after these specifications are finalized (or July 1, 2015, if the specifications are still unfinished), for jurisdictions that have already instituted a traffic infraction detector program. The bill also validates and ratifies infraction enforcement actions taken by cities and counties for the period of the grandfather clause.

The bill provides for a complaint process for complaints that a county or municipality is employing traffic infraction detectors for purposes other than the promotion of public health, welfare, and safety or in a manner inconsistent with the law. A complaint may be submitted to the governing board of the county or municipality.

Each county or municipality that operates a traffic infraction detector is required to submit a biannual report to FDOT, which must contain:

- the complaints received, along with any investigation and corrective action taken by the governing body;
- the results of using the traffic infraction detector; and
- the procedures for enforcement.

FDOT must submit a biannual summary report to the Governor and Legislature which must contain:

- a review of the information received from the counties and municipalities;
- a description of the enhancement of the traffic safety and enforcement programs; and
- recommendations, including any necessary legislation.

The first report must be submitted on or before December 1 of each even-numbered year. After reviewing the report, the Legislature may exclude a county or municipality from further participation in the program.

The bill provides a severability clause and is effective upon becoming law.

**B. SECTION DIRECTORY:**

**Section 1.** Citing the act as the “Mark Wandall Traffic Safety Act.”

**Section 2.** Amending s. 316.003, F.S.; defining the term “traffic infraction detector.”

**Section 3.** Creating s. 316.0083, F.S.; creating the “Mark Wandall Traffic Safety Program” to be administered by FDOT; authorizing counties and municipalities to enact ordinances permitting the use of traffic infraction detectors and specifying the requirements of an ordinance; requiring access to county or FDOT right-of-way; exempting emergency vehicles from an ordinance enacted under this section; providing penalties for traffic control signal violations detected by traffic infraction detectors; providing for the issuance, challenge, and disposition of tickets; providing for disposition of fine revenue; providing a process for complaints that a county or municipality is employing detectors in a manner inconsistent with this section; and requiring FDOT to submit a report to the Governor and Legislature.

**Section 4.** Amending s. 316.0745(6), F.S.; requiring traffic infraction detectors to meet certain specifications.

**Section 5.** Creating s. 316.07456, F.S.; providing a grandfather clause for existing municipal equipment and programs.

**Section 6.** Creating s. 316.0776, F. S.; allowing placement and installation of traffic infraction detectors on the State Highway System, county roads, and city streets pursuant to specifications developed by FDOT, so long as the safety and operation of the road facility is not impaired.

**Section 7.** Amending s. 316.1967, F.S., adding red-light camera ordinance violations to the violations list reported to DHSMV.

**Section 8.** Amending s. 395.4036, F.S., providing direction for the distribution of funds collected by the DOH Administrative Trust Fund.

**Section 9.** Recognizing and ratifying enforcement actions by local governments using traffic cameras prior to the effective date of this act.

**Section 10.** Providing a severability clause.

**Section 11.** Providing that the bill is effective upon becoming law.

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

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

1. Revenues:

See Fiscal Comments, below.



2. Expenditures:

See Fiscal Comments, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments, below.

2. Expenditures:

See Fiscal Comments, below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent local governments choose to enact ordinances to permit the use of traffic infraction detectors there may be a fiscal impact to the private sector. Traffic infraction detectors will increase the scope of a local government's enforcement of red light violations, therefore increasing the possibility of a motor vehicle owner receiving a ticket for a red light violation. The fine for the ordinance violation, as determined by a traffic infraction detector, is \$150. If a person chooses to contest the ticket, they may appear before a judge, but they are deemed to have waived the limitation of civil penalties imposed for the violation and, if the ticket is upheld by the judge, may be charged the \$150 fine plus court costs.

There are a number of providers of traffic infraction detectors in Florida. These providers and others may realize a significant positive fiscal impact, depending on how each provider structures its services and negotiates with a given the county or municipality.<sup>19</sup> The fine for a violation of current municipal traffic infraction detector ordinances in Florida ranges from \$50 to \$150. The amount of the fine received by the vendor varies based on negotiations between the vendor and the local government. Two important factors in the negotiation are whether the vendor will bear the up-front installation costs of the equipment, and the eventual ownership of the equipment. In the case where the vendor bears the costs of the initial installation, that vendor may receive a large percentage of the fine during the early years of the contract, in order to recoup its initial outlay. The local government may receive a larger share in later years, and will also ultimately own the equipment outright. Other jurisdictions may elect to negotiate a different arrangement whereby the vendor retains ownership of the equipment, and receives a fixed percentage of the fine over the course of the contract. A third arrangement involves a relatively large flat-fee monthly payment to the vendor, and a larger percentage of the fine retained by the local government.<sup>20</sup>

During the 2008 Legislative session, a bill similar to HB 325 provided that local governments would receive \$30 per violation instead of the \$75 per violation allowed by HB 325.<sup>21</sup> The Florida League of Cities noted at the time that "capital and maintenance costs of these camera systems are significant and there are few, if any, vendors that would be able to provide the systems at this price."<sup>22</sup>

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<sup>19</sup> A 2002 audit by the California State Auditor noted that "[t]he fees and fee structures that local governments pay their vendors differ significantly." The audit indicated that some cities paid anywhere from \$25 to \$106 per citation to the vendor, with larger cities like San Francisco and Los Angeles paying additional flat fees to cover certain costs. The audit suggested that "[t]hese variances may be due to the relative size differences among the programs and each local government's negotiating ability." *Red Light Camera Programs: Although They Have Contributed to a Reduction in Accidents, Operational Weaknesses Exist at the Local Level*, Report No. 2001-125, California State Auditor, Bureau of State Audits, July 2002.

<sup>20</sup> The California audit cited in Footnote 19 summarizes the varying business cases as follows: "The advantage of paying a fee for each paid citation is that the local government does not have to pay a large amount all at once. The downside of this method is that increasing profits by maximizing the number of citations issued might become an incentive for vendors—and create a poor perception of the red light camera program by the public. Conversely, paying the vendor a flat fee removes any incentive to maximize the number of citations issued to bolster profits but makes the local government susceptible to the risk that, should the number of citations issued decrease, it would not receive enough revenue to pay the vendor."

<sup>21</sup> Committee Substitute for House Bill 351 (2008) by the Economic Expansion & Infrastructure Council and Reagan.

<sup>22</sup> *League of Cities, Inc. Legislative Briefs - Traffic Enforcement*, Scott Dudley, March 21, 2008.

## FISCAL COMMENTS:

In 2009, the Revenue Estimating Conference estimated that a substantially similar bill would have a recurring positive indeterminate impact on state revenues and a recurring indeterminate impact on local governments. There may be an increase in fine revenue for the local governments that choose to enact ordinances permitting the use of traffic infraction detectors, the amount of which is indeterminate and reliant on driver awareness and future behavior. There may be a decrease in fine revenues to local governments who are now collecting fines from traffic infraction detector ordinances adopted prior to the provisions of this bill becoming effective.

There may be an increase in fine revenue for the local governments that choose to enact ordinances permitting the use of traffic infraction detectors, the amount of which is indeterminate and reliant on driver awareness and future behavior. There may be a decrease in fine revenues to local governments who are now collecting fines from traffic infraction detector ordinances adopted prior to this bill becoming effective.

The DOH Administrative Trust Fund will receive approximately 13 percent of all revenue generated by the bill (\$20 from each fine). Of this revenue, ninety-four percent will be directed to trauma centers, three percent will be distributed to non-trauma center hospitals, based on their proportional number of emergency-room visits and three percent will be distributed to crisis-stabilization units, rural health initiatives, and community-based support programs aiding persons with brain injuries.

The bill provides that half of the revenue generated by the tickets is retained by the local jurisdiction (\$75 from each fine). As a result, there may be an increase in fine revenue for any local governments that choose to enact ordinances permitting the use of traffic infraction detectors. The amount of revenue is indeterminate, as the number of ordinance violations to be issued is unknown and depends on driver awareness and future behavior.

The remaining 37 percent of the revenue collected (\$55 from each fine) is deposited into the General Revenue Fund.

To the extent local governments choose to enact ordinances to permit the use of traffic infraction detectors there may be a fiscal impact to the local governments for the cost of the acquisition, installation and maintenance of the devices, the amount of which will vary depending on the negotiated agreement between the local government and any private vendor providing the equipment and service. The price of a traffic infraction detector ranges from \$50,000 to \$100,000. There may also be installation, maintenance and monitoring fees, based on the negotiated agreement.

Local court systems may see a caseload increase, in the event that vehicle operators choose to contest tickets as permitted under the bill. Although the bill permits the court to impose a penalty "not to exceed \$150 plus court costs," there may be an indeterminate cost to the local court system.

The state will incur minor administrative expenses as a result of this legislation. The bill requires FDOT to collect reports from municipalities and to prepare an annual report for the Legislature. The bill also requires FDOT to prepare standards for traffic infraction detectors.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

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

Not applicable because the bill does not appear to: require counties or cities to spend funds or take action requiring the expenditure of funds; or reduce the percentage of a state tax shared with cities or counties.

Article VII, section 18, paragraph (b) of the Florida Constitution states that the Legislature must pass by a two-thirds vote any general law that will “reduce the authority that municipalities and counties have to raise revenues in the aggregate....” Paragraph (d) states that laws “creating, modifying, or repealing noncriminal infractions are exempt from the requirements of this section.”

If a municipality enacted a traffic infraction detector ordinance prior to this legislation becoming effective, and if the local ordinance allows the local government to retain a greater portion of the fine than allowed under this bill, then it could be argued that the bill reduces the authority that the municipality has to raise revenues in the aggregate. However, the bill creates a noncriminal infraction which counties and cities may choose to enforce by enacting a local ordinance; therefore the bill is exempt from the mandate provisions.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DOH will be required to develop rules regarding the weighting of scores to be applied to the distribution funds to verified trauma centers based on severity of trauma. The determination of severity for purposes of revenue distribution is to be based on the DOH's International Classification Injury Severity Scores or another statistically valid and scientifically accepted method of stratifying a trauma patient's severity of injury, risk of mortality, and resource consumption as adopted by rule, weighted based on the costs associated with and incurred by the trauma center in treating trauma patients.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 9 of the bill “recognizes, validates, and ratifies any enforcement action” taken by a local government using a previously installed traffic infraction detector. There are pending lawsuits in multiple jurisdictions regarding the legality of municipal ordinances permitting traffic infraction detectors.<sup>23</sup> It is unclear how the parties to these lawsuits, or the courts hearing the lawsuits, will react to the retroactive statutory “validation” and “ratification” of previously-issued citations for violating traffic infraction detector ordinances.

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

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<sup>23</sup> “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);