

071144832

SENATE BILL NO. 1141

Offered January 10, 2007

Prefiled January 10, 2007

A BILL to amend and reenact §§ 3.02:1, 3.02:2 and 16.04, as amended, of Chapter 147 of the Acts of Assembly of 1962, which provided a charter for the City of Virginia Beach, and to amend Chapter 147 of the Acts of Assembly of 1962 by adding in Chapter 2 sections numbered 2.03 and 2.04, relating to photo-monitoring systems and elections.

Patron—Wagner

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.02:1, 3.02:2 and 16.04, as amended, of Chapter 147 of the Acts of Assembly of 1962 are amended and reenacted and that Chapter 147 of the Acts of Assembly of 1962 is amended by adding in Chapter 2 sections numbered 2.03 and 2.04 as follows:

§ 2.03. POWER TO USE PHOTO-MONITORING SYSTEMS.

A. The City of Virginia Beach may provide by ordinance for the establishment of a traffic signal enforcement program imposing monetary liability on the operator of a motor vehicle for failure to comply with traffic light signals in accordance with the provisions of this section. The city may install and operate traffic light signal photo-monitoring systems at no more than 25 intersections at any one time.

B. The operator of a vehicle shall be liable for a monetary penalty imposed pursuant to this section if such vehicle is found, as evidenced by information obtained from a traffic light signal violation monitoring system, to have failed to comply with a traffic light signal within such locality.

C. Proof of a violation of this section shall be evidenced by information obtained from a traffic light signal violation monitoring system authorized pursuant to this section. A certificate, sworn to or affirmed by a police officer employed by the city authorized to impose penalties pursuant to this section, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by a traffic light signal violation monitoring system, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape, or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation pursuant to an ordinance adopted pursuant to this section.

D. In the prosecution for a violation of an ordinance adopted as provided in this section, prima facie evidence that the vehicle described in the summons issued pursuant to this section was operated in violation of such ordinance, together with proof that the defendant was at the time of such violation the owner, lessee, or renter of the vehicle, shall constitute in evidence a rebuttable presumption that such owner, lessee, or renter of the vehicle was the person who committed the violation. Such presumption shall be rebutted if the owner, lessee, or renter of the vehicle (i) files an affidavit by regular mail with the clerk of the general district court that he was not the operator of the vehicle at the time of the alleged violation or (ii) testifies in open court under oath that he was not the operator of the vehicle at the time of the alleged violation. Such presumption shall also be rebutted if a certified copy of a police report, showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation of this section, is presented, prior to the return date established on the summons issued pursuant to this section, to the court adjudicating the alleged violation.

E. For purposes of this section, "owner" means the registered owner of such vehicle on record with the Department of Motor Vehicles. For purposes of this section, "traffic light signal violation monitoring system" means a vehicle sensor installed to work in conjunction with a traffic light that automatically produces two or more photographs, two or more microphotographs, video, or other recorded images of each vehicle at the time it is used or operated in violation of § 46.2-833, 46.2-835, or 46.2-836 of the Code of Virginia. For each such vehicle, at least one recorded image shall be of the vehicle before it has illegally entered the intersection, and at least one recorded image shall be of the same vehicle after it has illegally entered that intersection.

F. Imposition of a penalty pursuant to this section shall not be deemed a conviction as an operator and shall not be made part of the operating record of the person upon whom such liability is imposed, nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage. No monetary penalty imposed under this section shall exceed \$50, nor shall it include court costs.

G. A summons for a violation of this section may be executed pursuant to § 19.2-76.2 of the Code of Virginia. Notwithstanding the provisions of § 19.2-76 of the Code of Virginia, a summons for a violation

INTRODUCED

SB1141

59 of this section may be executed by mailing by first class mail a copy thereof to the owner, lessee, or
60 renter of the vehicle. In the case of a vehicle owner, the copy shall be mailed to the address contained
61 in the records of the Department of Motor Vehicles; in the case of a vehicle lessee or renter, the copy
62 shall be mailed to the address contained in the records of the lessor or renter. Every such mailing shall
63 include, in addition to the summons, a notice of (i) the summoned person's ability to rebut the
64 presumption that he was the operator of the vehicle at the time of the alleged violation through the
65 filing of an affidavit as provided in subsection D and (ii) instructions for filing such affidavit, including
66 the address to which the affidavit is to be sent. If the summoned person fails to appear on the date of
67 return set out in the summons mailed pursuant to this section, the summons shall be executed in the
68 manner set out in § 19.2-76.3 of the Code of Virginia. No proceedings for contempt or arrest of a
69 person summoned by mailing shall be instituted for failure to appear on the return date of the summons.

70 H. In any action at law brought by any person or entity as the result of personal injury or death or
71 damage to property, such evidence derived from a photo-monitoring system shall be admissible in the
72 same method prescribed as required in the prosecution of an offense established under this section
73 without the requirements of authentication as otherwise required by law.

74 I. Information collected by a photo-monitoring system installed and operated pursuant to subsection
75 A shall be limited exclusively to that information that is necessary for the enforcement of traffic light
76 violations. On behalf of the city, a private entity may not obtain records regarding the registered owners
77 of vehicles that fail to comply with traffic light signals. Notwithstanding any other provision of law, all
78 photographs, microphotographs, electronic images, or other data collected by a photo-monitoring system
79 shall be used exclusively for enforcing traffic light violations and shall not (i) be open to the public; (ii)
80 be sold or used for sales, solicitation, or marketing purposes; (iii) be disclosed to any other entity
81 except as may be necessary for the enforcement of a traffic light violation or to a vehicle owner or
82 operator as part of a challenge to the violation; or (iv) be used in a court in a pending action or
83 proceeding unless the action or proceeding relates to a violation of § 46.2-833, 46.2-835, or 46.2-836 of
84 the Code of Virginia or requested upon order from a court of competent jurisdiction. Information
85 collected under this section shall be purged and not retained later than 60 days after the collection of
86 any civil penalties. The city shall annually certify compliance with this section and make all records
87 pertaining to such system available for inspection and audit by the Commonwealth Transportation
88 Commissioner or the Commissioner of the Department of Motor Vehicles or their designee.

89 J. A private entity may enter into an agreement with the city to be compensated for providing the
90 traffic light signal violation monitoring system or equipment, and all related support services, to include
91 consulting, operations, and administration. However, only a police officer employed by the city may
92 swear to or affirm the certificate required by subsection C. The city shall not enter into an agreement
93 for compensation based on the number of violations or convictions produced.

94 K. When selecting potential intersections for a traffic light signal violation monitoring system, the
95 city shall consider factors such as (i) the accident rate for the intersection, (ii) the rate of red light
96 violations occurring at the intersection (number of violations per number of vehicles), (iii) the difficulty
97 experienced by law-enforcement officers in patrol cars or on foot in apprehending violators, and (iv) the
98 ability of law-enforcement officers to apprehend violators safely within a reasonable distance from the
99 violation. The city may consider the risk to pedestrians as a factor, if applicable. The city shall submit a
100 list of intersections to the Virginia Department of Transportation for final approval.

101 L. Before the implementation of a traffic light signal violation monitoring system at an intersection,
102 the city shall complete an engineering safety analysis that addresses signal timing and other
103 location-specific safety features. The length of the yellow phase shall be established based on the
104 recommended methodology of the Institute of Transportation Engineers. All traffic light signal violation
105 monitoring systems shall provide a minimum 0.3-second grace period between the time the signal turns
106 red and the time the first violation is recorded. If recommended by the engineering safety analysis, the
107 city shall make reasonable location-specific safety improvements, including signs and pavement
108 markings.

109 M. Prior to or coincident with the implementation or expansion of a traffic light signal violation
110 monitoring system, the city shall conduct a public awareness program, advising the public that the
111 locality is implementing or expanding a traffic light signal violation monitoring system.

112 § 2.04. POWERS RELATED TO SCREENING OF CERTAIN PROPERTY.

113 The city may by ordinance require the additional landscaping or other approved screening for retail
114 and commercial properties that have been abandoned for three years or more in certain designated
115 areas of the city.

116 § 3.02:1. ELECTION OF COUNCIL MEMBERS.

117 There shall be a general election on the first Tuesday in May in even-numbered years for the
118 election of council members to replace those whose terms expire at the end of June of that
119 year. Pursuant to an ordinance adopted by city council on June 27, 2006, city council elections shall
120 take place during the general election in November 2008, and during the November general election in

even years thereafter, for council members whose terms expire at the end of December of that year. Council members, including the mayor, whose terms expire as of June 30, 2008, or June 30, 2010, shall continue in office until their successors have been elected at the November election and take office on January 1. The term of office for each council member shall commence on July January 1 next following the date of election and shall continue until his successor has been duly elected and qualified. Each candidate shall state, at the time of filing, whether he is running at-large, from the district of his residence or for mayor. Candidates for council shall be nominated only by petition in the manner prescribed by general law. (1970, c. 206; 1971, c. 86; 1987, c. 227; 1995, c. 697)

§ 3.02:2. ELECTION OF MAYOR.

The mayor shall be elected at the general election on the first Tuesday in May 1988 in November 2008, and each fourth year thereafter, to serve for a term of four years. Candidates for mayor shall run for one of the at-large seats. A candidate running for mayor shall not run for any other seat.

In the event any councilman, including the mayor, shall decide during his term of office to be a candidate for mayor, he shall tender his resignation as a councilman not less than ten days prior to the date for the filing of petitions as required by general law. Such resignation shall be effective on June 30 December 31, shall constitute the councilman's intention to run for mayor, shall require no formal acceptance by the remaining councilmen and shall be final and irrevocable when tendered.

The unexpired portion of the term of any councilman council member who has resigned to run for mayor shall be filled at the same general election. (1987, c. 227)

§ 16.04. ELECTION OF THE SCHOOL BOARD.

A. Beginning with the general election held in May of 1998, all All board members shall be elected in the same manner and according to the same schedule that council members are elected. All board members shall be elected for terms of four years. Every two years thereafter, there shall be a general election in May for the election of board members to replace those whose terms expire at the end of June of a given election year. The term of office for each elected board member shall commence on the first day of July January next following the date of election and shall continue until a successor has been duly elected and qualified. Pursuant to an ordinance adopted by city council on June 27, 2006, board members whose terms expire as of June 30, 2008, or June 30, 2010, shall continue in office until their successors have been elected at the November election and take office on January 1. Each candidate shall state at the time of filing whether he is running at large or from the district of his residence.

B. Each of the 11 elected board members shall be elected by the voters of the city at large.